

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 303

UNITED STATES, APPELLANT,

vs.

VON'S GROCERY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CALIFORNIA

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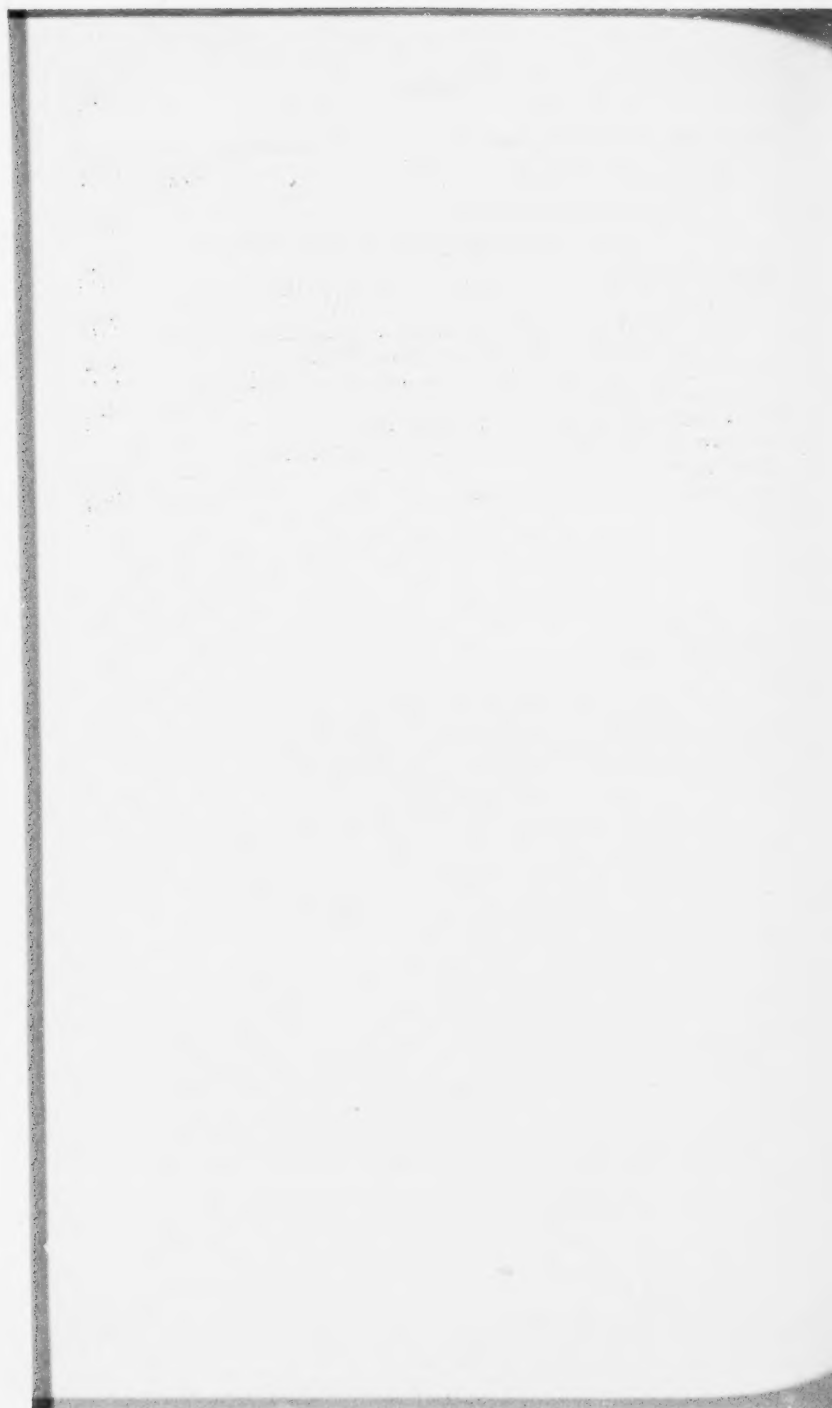
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The Court: Very well.

[fol. 1924] Mr. Coyle: Your Honor, I would say that this exhibit doesn't prove very much in this case because there is no indication whether these cars were driven by people who are buying food, buying clothes or——

The Court: That's right, counsel. I thought of that immediately. It doesn't show very much concerning the food business.

Mr. Coyle: That is correct, your Honor.

[fol. 1925] The Court: So as to weight, it doesn't have too much weight.

Mr. Vaughn: Well, that is correct. At least these people were accessible to the discount food markets.

The Court: They were accessible to them, and whatever that was I don't know yet, how big a department in food they have.

Mr. Vaughn: Yes, your Honor. This map I referred to is Defendants' Exhibit AP.

We offer that in evidence.

The Court: That will be admitted—any objection? I take it you are just talking about weight now rather than objection.

Mr. Coyle: That is correct, your Honor.

The Court: It will be admitted.

The Clerk: Defendants' Exhibit AP in evidence.

(The exhibit referred to was received in evidence as Defendants' Exhibit AP.)

Mr. Vaughn: I would like now to turn to the affidavit of Godfrey Lebhar, Godfrey M. Lebhar, L-e-b-h-a-r, which we are offering separately in part because we feel that this is the most important expert opinion and document affidavit in the case.

The Court: You mean on your side, counsel, or in the entire case?

[fol. 1926] Mr. Vaughn: In the entire case, your Honor.

Mr. Coyle: If your Honor please, we took Mr. Lebhar's deposition in New York. I would like to have that——

The Court: You are certainly entitled to that. So it will be copied, the affidavit will be admitted and copied into the record as heretofore prescribed and then the deposition filed.

Mr. Coyle: Yes. Unfortunately, we don't have the signed original here, I just have that—

The Court: I take it there is no objection on that score?

Mr. Vaughn: I will stipulate it may be introduced.

The Clerk: This is one that has never been filed.

Mr. Coyle: It has never been filed, as far as I know.

The Court: Do you have a copy of that affidavit? If it is that important, you ought to have several copies, counsel.

Mr. Vaughn: Of the affidavit?

The Court: Yes.

Mr. Vaughn: Yes, we have got many copies of the affidavit.

The Court: I notice this is the first one you haven't [fol. 1927] passed me a copy—I see, here it comes.

The Clerk: That is Defendants' Exhibit BH, your Honor.

(The exhibit referred to was received in evidence as Defendants' Exhibit BH.)

[fol. 1928] Mr. Coyle: And there were five exhibits to the deposition that I would like to have marked and introduce them.

The Court: Do you want them marked as one exhibit?

Mr. Coyle: I think those probably ought to be marked separately.

The Clerk: Are these documents which are not on your list?

Mr. Coyle: That is correct.

The Clerk: I will have to give them new numbers. They will be 74, 75, 76 and 77 and 78.

Mr. Coyle: Why don't you mark all of them.

The Court: You want them separate?

Mr. Coyle: It probably would be more convenient.

The Court: Yes.

The Clerk: They are admitted, your Honor?

The Court: They are admitted.

The Clerk: Plaintiff's Exhibits 74, 75, 76, 77 and 78 in evidence.

(The exhibits referred to were marked Plaintiff's Exhibits 74, 75, 76, 77 and 78 and were received in evidence.)

The Court: I usually like to end a case for the record what they are. Maybe counsel can do it, just some brief indication for the record what they are.

[fol. 1929] Mr. Coyle: Government's Exhibit 74 is a table comparing the chains of less than ten stores with the chains of ten or more stores in terms of total number of stores operated in the Los Angeles metropolitan area.

Government's Exhibit 75 is a comparison of the number of grocery stores and percentage of all grocery stores in the Los Angeles metropolitan area between the 40 chains with the most stores in 1953 and the 24 chains with the most stores in 1962.

Government's Exhibit 76 is a table showing the number of grocery stores operated by chains expressed as a percentage of all grocery stores operating in the Los Angeles metropolitan area.

And Government's Exhibit 77 is a table showing chains operating in the Los Angeles metropolitan area in the period of 1953 through 1962.

And Government's Exhibit 78 is Mr. Lebhar's—

The Court: I didn't know there was another document, is there 78?

Mr. Coyle: Yes, you marked it.

The Clerk: I did.

The Court: All right. Government's 78 is admitted.

Mr. Coyle: That is Mr. Lebhar's deposition.

The Court: They are all admitted.

The Clerk: Governments Exhibits 74, 75, 76, 77 and 78 [fol. 1930] in evidence.

The Court: Counsel, now do you wish those copied into the record, is that what you are saying?

Mr. Coyle: I haven't said that, your Honor. I don't think it is necessary to copy them into the record.

The Court: All right.

Mr. Vaughn: We have objections to all of those exhibits.

The Court: I have already admitted them. You are coming around rather late.

Go ahead, I will withdraw the admission and hear your objection.

Mr. Vaughn: The objections are they are argumentative and that they misstate facts.

Mr. Coyle: They are all referred to in the deposition, your Honor, by the witnesses.

Mr. Vaughn: And the objections were noted in the depositions.

The Court: Well, you say, when you say they misstate the facts, that is a question that goes to the trier of the facts, doesn't it?

Is this—I don't have the deposition, but these facts that are set forth here, these figures, these comparisons they call them, whose figures are they?

Mr. Vaughn: They are figures taken from Mr. Lebhar's [fol. 1931] tables by the Government. And the Government treated certain exhibits based on the tables.

The Court: I know, but did he testify to these?

Mr. Vaughn: He was asked about them and he was able to testify that certain figures were added up correctly. And that is about all he was able to do.

Mr. Coyle: And that they came from his work papers, his affidavit.

Mr. Vaughn: Your Honor, I really think our objection is directed primarily to the documents, and the only way I have of identifying is to say 1 and 2—do you know what number that is?

The Court: I will pass them back so you can—

The Clerk: That is 75.

Mr. Vaughn: 75.

The Court: 75.

Mr. Vaughn: The Government has two columns there—

The Court: You had better identify it for me.

[fol. 1932] Mr. Vaughn: 75 is correct.

They have attempted to compare there the 40 chains with the most stores in 1953, their number of stores, and the 24 chains with the most stores in 1962.

Now, that isn't misleading because the first column refers to Mr. Lebhar's tables. Those are all concerned with two or more stores.

While the next column refers in Mr. Lebhar's tables to all concerns with 10 or more stores.

I think I have stated that correctly. So you are comparing apples and oranges, and it is too argumentative.

Mr. Coyle: No, your Honor, we are just restating Mr. Lebhar's affidavit. That is exactly what the affidavit says.

Mr. Vaughn: It gives the impression that there were fewer chains in 1962, that is, concerns with two or more stores, than there were in 1953. And that is contrary to Mr. Lebhar's testimony.

Mr. Coyle: It shows just what Mr. Lebharr's figures show.

The Court: Well, I can't tell, counsel, without resorting to the testimony. And I think that is probably a question for the trier of the facts, isn't it?

Mr. Vaughn: Yes, I would be willing to have my objection noted in the record.

[fol. 1933] The Court: All right. I will admit them. These are all admitted, including 75.

The Clerk: That is 74, 75, 76, 77, and 78—

The Court: I can't tell by looking at it whether it means anything at all. It would have to be correlated in the testimony to what he has testified to.

(The exhibits referred to were received in evidence as Plaintiff's Exhibits 74, 75, 76, 77, and 78.)

Mr. Vaughn: I looked at the—

The Court: All right. It can't hurt you.

Mr. Vaughn: We have one other affidavit, and only one other. And that is the affidavit of W. D. Hayden. But counsel have not read the revised affidavit of Mr. W. D. Hayden, and they have asked us to postpone offering it until tomorrow, which we are willing to do.

We do have certain other exhibits which have no affidavits. Those are Exhibits AS through AW, reflected on our exhibit list.

The Court: Suppose we, counsel—Mr. Coyle, as he calls these off, unless you object, I will admit them. Is that satisfactory?

Mr. Coyle: Yes, your Honor.

The Court: Call them off, counsel.

Mr. Vaughn: AS, which is Plaintiff's—

[fol. 1934] The Court: Now, go slowly because the clerk has to mark them.

Admitted.

(The exhibit referred to was received in evidence as Defendants' Exhibit AS.)

[fol. 1935] The Court: Now, identify what they are, counsel.

Mr. Vaughn: AS is plaintiff's answer to supplemental interrogatories 6-A through 6-D of Defendant Von's Grocery Company.

The Court: Let me see that.

(Exhibit was placed before the court.)

Mr. Vaughn: We asked them who might be affected by this merger and they set up a list of every grocery store in Los Angeles County and Orange County.

The Court: This is an answer to what?

Mr. Vaughn: Defendants' answer to plaintiff's supplemental interrogatories.

The Court: This is just a list of every store in the area?

Mr. Vaughn: That is correct.

Mr. Coyle: It doesn't prove anything, your Honor.

Mr. Vaughn: I think it proves where each store is.

Mr. Coyle: We have no objection to it.

The Court: All right. It is admitted.

The Clerk: AS admitted.

[fol. 1936] Mr. Vaughn: Exhibit AT is defendants' answer to plaintiff's interrogatory No. 2-F, which I offer in evidence.

By the way, I notice on Government's Exhibit 72, we have to go through these one by one.

The Court: You don't have to do it now, you can get familiar with them and you can offer them all at one time, if you wish, counsel, and you can specify which ones you object to. Let's try to correlate some of these things.

[fol. 1937] Mr. Vaughn: I would be happy to, your Honor.

The Court: You don't need to do it any further. Go ahead and offer them all.

Mr. Vaughn: AU, which is Certified Groceries 1962 annual report.

AZ—

Mr. Coyle: Your Honor, we object to that.

The Court: You object to that?

Mr. Coyle: Yes, sir.

The Court: On what ground?

Mr. Coyle: On the ground it is self serving, a self-serving answer to one of our interrogatories. It is an answer to our interrogatories. That is not evidence, your Honor, we want to put in.

The Court: Well, it would only be evidence, counsel, if you offered it.

Mr. Vaughn: We can do that, your Honor.

The Court: Well.

Mr. Vaughn: Mr. Von der Ahe, Theodore Von der Ahe.

The Court: Do you think it is necessary, counsel, to require this?

Mr. Coyle: I understand he is going to be a witness anyway.

The Court: I know, but if we can save any time on this wouldn't it be better to do it? Is there any harm coming [fol. 1938] to you to admit it, if you apply the rules of evidence so we do not have to, but it—

Mr. Coyle: It may be so, your Honor.

The Court: But do you have any serious objection about this?

Mr. Coyle: Yes, your Honor.

The Court: What is the problem?

Mr. Coyle: It is a self-serving statement.

The Court: Well—

Mr. Coyle: It is not evidence.

The Court: That isn't my point. The rules of evidence, as I understand them, it doesn't hurt to use this method, even though it may be self serving, rather than have him get on the stand and go through all of it.

Mr. Coyle: He is going to be on the stand anyway. If you want to admit the document now I will ask him about it tomorrow. That is all right.

The Court: You know, I usually allow self-serving declarations in defense in criminal cases, which is contrary to the rules. I always thought that if a man could acquit himself by a self-serving declaration he is entitled to be acquitted.

Mr. Coyle: I think you should admit the pleadings, have the pleadings introduced by the parties that made the pleadings as evidence, if you are going to do that.

[fol. 1939] The Court: Now, you have mentioned another ground. You are talking about self serving, these are self serving, is that correct?

Mr. Coyle: That is correct, your Honor.

The Court: Well, I will admit it in evidence.

The Clerk: That is AT in evidence.

(Document referred to was admitted in evidence as Defendants' Exhibit AT.)

Mr. Vaughn: Your Honor, the next one is AU, the last one of the documents which contain various information including merger data.

The Court: Any objection?

Mr. Coyle: No objection.

The Court: Admitted.

(Document marked Defendants' Exhibit AU was admitted in evidence.)

Mr. Vaughn: And the last one which I think I overlooked before is Exhibit L which contains physical data taken from records which concern doing business in the Los Angeles metropolitan area, Safeway, A & P, American Stores, Food Fair, Mayfair, Lucky Stores.

I offer that Exhibit L in evidence.

The Court: Any objection?

Mr. Coyle: No objection.

The Court: Admitted.

[fol. 1940] Mr. Vaughn: Thank you, your Honor.

The Clerk: Defendants' Exhibit L in evidence.

(Document marked Defendants' Exhibit L was admitted in evidence.)

Mr. Vaughn: That is all we have.

The Clerk: Your Honor, the court didn't actually rule on AN series, you didn't say they were admitted.

The Court: Yes, I marked them.

The Clerk: That is Defendants' AN, AT and AU.

The Court: Yes.

Mr. Coyle: I don't think we objected to those anyway, your Honor.

The Court: All right.

Mr. Vaughn: Your Honor, may I turn the lectern back to Mr. Alsup.

The Court: Yes, indeed.

[fol. 1941] Mr. Alsup: If your Honor please, I call Mr. Theodore A. Von der Ahe.

THEODORE A. VON DER AHE, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Theodore A. Von der Ahe.

The Clerk: Would you spell your name, please?

The Witness: V-o-n d-e-r A-h-e.

Direct examination.

By Mr. Alsup:

Q. Where do you reside, Mr. Von der Ahe?

A. At 5220 West Second Street in Los Angeles.

Q. And what is your business or occupation?

A. I am the president of Von's Grocery Company.

Q. And would you state what your educational background is?

A. I went to Loyola High School, I went to Loyola University, I studied law at night and I received a Bachelor of Law degree and Master of Law degree.

Q. And what is your experience in the grocery business, [fol. 1942] Mr. Von der Ahe?

A. I was virtually born into the grocery business. My grandfather and father were both in the grocery business. I worked in the grocery business after school, on holidays and on Saturdays. I worked full-time, beginning in 1927. And I worked as a truck driver, warehouse manager, buyer, and I have been in practically all phases of the grocery business for the last 37 years on a full-time basis.

Q. When did you start your own company, Mr. Von der Ahe?

A. In 1932.

The Court: You picked a very happy year, Mr. Von der Ahe. 1932 was a very booming year, as I remember it, is that right?

The Witness: That's right, your Honor, yes. The very bottom of the depression.

By Mr. Alsup:

Q. Where was your first store located?

A. In Lynwood.

Q. What other stores were in that area at that time that you competed with?

A. There were half a dozen independents and one Pay and Take Store, which was a price-cutting unit for the Safeway Stores.

Q. Were you able to keep, to compete with the Safeway Store successfully?

[fol. 1943] A. Yes, I did.

The Court: What did you open, one store first, Mr. Von der Ahe?

The Witness: We opened one store, your Honor, yes.

The Court: What was the size of the store, square footage, do you remember?

The Witness: The store was 4500 feet. It was 50 feet wide by 90 feet deep.

By Mr. Alsup:

Q. And thereafter, as your affidavit describes, Mr. Von der Ahe, you began to build chains, is that correct?

Mr. Coyle: If your Honor please, he is leading this witness.

The Court: Well, counsel, I don't think there will be any harm. We all know he built the chain. I can answer that myself.

Go ahead.

Mr. Alsup: I was trying to shortcut, your Honor.

The Court: I don't mind leading on this score.

The Witness: I might say, our first store, we operated the grocery department only. The produce department was leased out and also the meat department.

Our second store, which we opened in 19—the first part of 1933 was a similar arrangement. We had only the grocery [fol. 1944] department, very small store.

By Mr. Alsup:

Q. Was that a common practice in Los Angeles in those days?

A. In those days it was.

Q. And when did that practice change, if it did?

A. As the persons who were accumulating a few stores got to be operating small chains, they realized that it was to their benefit to operate all of the departments, because the lessee many times would take a free ride on the merchandising activities of the grocery man.

So we, in the interest of a having better operation, would operate the delicatessen departments ourselves and then the produce departments, and finally the meat departments, which were the last to be taken over.

Q. You testified you started out in 1932 with your first store. Do you know any other concerns in this area which did the same thing at about the same time?

A. Yes. This was the time when most of the local chains originated. I can think of Market Basket that started about the same time. Shopping Bag started about the same time. Alexander's about the same time, Carte Bros.

There was a firm called Miller & Huck, there was the Thriftmart started about the same time. Most of them [fol. 1945] began their existence during the early 1930s.

Q. Can you think of any concerns which have started in more recent years and have grown larger?

A. Yes.

[fol. 1946] Q. Would you name them, please?

A. This is an ever-changing business, and firms drop off and new firms enter the market.

But I can think immediately of good chain operations: Shoppers Markets, operated by Mr. Fadderman. I can think of the Hughes Markets, operated by Mr.—I might say a first cousin of our counsel at bar, Mr. John Hughes of the government. I can think of Joe Goodnight, who operates the Michaels Markets.

I can think of Ted Wood, who operates the Pantry Markets.

There is many more, people can get into the grocery business if they have the desire and are willing to do so.

Q. Do you know when Joe Hughes got started, Mr. Von der Ahe?

A. I believe it was around 1952.

Q. And how about Mr. Fadderman of Shoppers Markets?

A. Mr. Fadderman had one market in the late 1940's. But I believe he made his big move in the early 1950's.

Q. And you mentioned Ted Wood of the Pantry Markets. How large is that chain?

A. Ted Wood used to work for Alpha Beta Stores. And I would say about 10 years or so ago he left Alpha Beta and started the Pantry Markets, which is now 10 or 11 stores, if I remember.

[fol. 1947] Q. And you mentioned Joe Goodnight of Michaels Markets. When did they get started?

A. Joe Goodnight started just recently. I believe it was around 1959 or 1960. He operates seven markets already—and very good ones, I might add.

Q. Now, prior to the time you commenced your business in 1932, Mr. Von der Ahe, your father had a chain of stores, is that correct?

A. That is correct.

Q. How many stores were in that chain?

A. He had a chain of 87 stores.

Q. And would you describe the stores?

A. These were all very small stores, which consisted of only three departments, usually meat department, produce department, and grocery department.

My father's chain operated only the grocery departments in those stores. All the meat departments were leased out and all the produce departments were leased out.

Q. And can you tell us what the gross annual sales of your father's chain of 89 grocery departments were?

A. For that year 1928 the sales were just slightly over three million dollars in all 87 stores.

Q. Can you tell us what—

The Court: Incidentally, may I interrupt?

[fol. 1948] The Witness: Yes.

The Court: What was the profit margin at that time?

The Witness: Your Honor, I would have to make a guess, but I would say it was in the neighborhood of 2 to 3 per cent.

The Court: The reason I asked the question is because it seems to me that this enters into the competitive feature,

that is, the increase in earnings or the decrease, it seems to me it is rather an appropriate and important factor.

Mr. Alsup: Yes, your Honor.

The Court: Go ahead, counsel.

By Mr. Alsup:

Q. Now, what did your father do with his chain of 87 stores?

A. He sold them to MacMarr, Inc. That is M-a-c-M-a-r-r.

Q. When was that?

A. Effective January 1, 1929.

Q. And what happened to MacMarr?

A. MacMarr was subsequently acquired by Safeway Stores.

Q. To your knowledge, was that the beginning of Safeway in this area?

[fol. 1949] A. No, it was not exactly the beginning of Safeway. I believe Safeway began here by acquiring the Sam Selig operation. And then the Piggly-Wiggly operation, and then the MacMarr operation.

Q. I see. Do you have any knowledge as to how many stores Safeway had in this area in 1932 when you started out in your own organization?

A. I believe it was in the neighborhood of around a thousand.

Q. And how many stores, to your knowledge, does Safeway have in this area today?

A. I would make a guess of about 225 stores.

Q. Now, you have stated in your affidavit, Mr. Von der Ahe, various reasons for the merger with Shopping Bag and various other matters dealing with competition in this area. And I will not ask you to reiterate all those matters.

I believe there are some matters in your affidavit which require correction, however—

The Court: Before you get to that, may I ask a question, please?

Mr. Alsup: Yes, your Honor.

The Court: Whether it has relevancy or not—it has relevancy probably, how much weight it may have I don't know.

[fol. 1950] Do any of these stores that you have mentioned give credit? Are they all cash and carry?

The Witness: Which ones have I mentioned, your Honor?

The Court: Well, you have mentioned quite a few over a period, going back to the beginning with MacMarr.

The Witness: Well, I don't know——

The Court: Are they all cash and carry?

The Witness: To the best of my knowledge, they were all cash and carry stores. None of them gave credit.

The Court: I would like to ask this: Is it a practice among the smaller independents to be on a cash and carry, or do they have a charge?

The Witness: I believe most of them are on cash and carry.

The Court: Cash and carry?

The Witness: We have a few credit and delivery stores, but they are more or less for the fancy stores which——

The Court: Jergenson's and those?

The Witness: Jergenson's and Blazers and so forth, that is more or less the fancy stores——

The Court: Jergenson's and that type.

The Witness: They were credit and delivery——

[fol. 1951] The Court: How many stores of that type, Mr. Von der Ahe, would you say—if you know—would there be in this area? I mean now the area of, the metropolitan area. You know what I mean?

The Witness: Of the credit and delivery stores?

The Court: Yes. Do you have any idea?

The Witness: A rough figure would be about 20, your Honor.

The Court: Is that all, 20?

The Witness: That would be a rough figure.

The Court: And generally speaking, how many units do they have, one or more?

The Witness: Well, I am saying the total number of units would be 20.

The Court: That is for the whole of Orange and Los Angeles Counties?

The Witness: It is just a guess, but I couldn't think of any more than that.

Mr. Alsup: I might add, your Honor, I understand

Jergenson's has about 10 stores. I don't know if they are all in Los Angeles and Orange Counties.

The Court: I doubt if they are, counsel. But I just wanted to get a sort of a sidelight on the——

Mr. Alsup: Yes. It may interest your Honor that the deposition of the witness, the government witness Craun, [fol. 1952] who testified this morning, indicated that 10 per cent of his business is credit business.

The Court: I see.

Mr. Alsup: At page 11, line 16 of Mr. Von der Ahe's affidavit, your Honor, there is reference to the government exhibits. And at the time the affidavit was given, the government exhibits bore different numbers. I wonder if we could correct that——

The Court: I think you counsel can do that without the witness having to do that, can't you, just correct it for the record.

Mr. Alsup: I believe that the exhibits referred to on page 11, line 16, should be re-numbered 33 and 34.

Is that right?

The Court: You mean they have been re-numbered——

Mr. Alsup: They have been re-numbered 33 and 34.

The Court: What are the exhibits, counsel? I have a list here, I can look at it—these are the defense exhibits or the government exhibits?

Mr. Alsup: Government exhibits.

Mr. Coyle: Exhibit B-8, your Honor.

Mr. Alsup: It should be 33 and 34. No, 34 and 35.

The Court: Well, 34—33 is J. Marshall—you said [fol. 1953] 33?

Mr. Alsup: I said that, your Honor, and——

The Court: 34 is J. Marshall, so it couldn't be that, could it?

Mr. Alsup: Mr. Von der Ahe in his affidavit makes reference to certain government exhibits, and he refers to what were known as government's Exhibits B-4 and B-5 at that time. I believe they are now 33 and 34, Mr. Coyle.

Mr. Coyle: Which page of the affidavit are you on?

Mr. Alsup: Page 11, line 16.

Mr. Coyle: 34 and 35?

The Court: Now, counsel, you will have to speak up because the reporter has to get it.

Mr. Coyle: 34 and 35.

Mr. Vaughn: Is that B-4 and B-5?

Mr. Alsup: Yes.

Mr. Coyle: According to my record it is 33 and 34.

Mr. Alsup: Well, if your Honor will permit us, we can make the physical corrections in the affidavit tonight.

The Court: I have no objection if counsel doesn't.

[fol. 1954] Mr. Coyle: I was mistaken. It is 33 and 34.

The Court: You want to correct it in the affidavit?

Mr. Alsup: Yes, your Honor.

The Court: The clerk will then permit them in the affidavit to make that correction, and initial it.

Mr. Coyle: If your Honor please, I think we have corrected it, all of our affidavits, to show the new numbers also.

The Court: That is perfectly all right. And counsel, you do the same.

The Clerk: You said 33 and 34?

Mr. Coyle: Yes.

The Clerk: The same as Mr. Vaughn said?

Mr. Coyle: Yes.

The Clerk: I think they are in agreement as to what it should be.

Mr. Coyle: Yes.

The Clerk: Is that right?

The Court: Yes, that's right.

The Clerk: It should be 33 and 34. Do you want me to make that change?

The Court: Yes, you can make it. You can make it.

The Clerk: That is on line 16, page 11, of his affidavit, [fol. 1955] is that right?

Mr. Coyle: Yes.

Mr. Vaughn: Yes.

Mr. Alsup: Your Honor, at page 31 of Mr. Von der Ahe's affidavit, he refers to an exhibit which was prepared by the government Dr. Mueller which listed purported acquisitions between 1948 and 1958 by various chains in this area. And at the time Mr. Von der Ahe's affidavit was prepared, that exhibit which Dr. Mueller prepared listed an acquisition by Thriftmart of a store from its wholly-owned subsidiary.

Since the time of this affidavit, Dr. Mueller's exhibit has been changed, and therefore it would seem to me that we should strike out the sentence commencing at line 10 and

ending on line 12 of Mr. Von der Ahe's affidavit, because otherwise it would not make any sense in relation to Dr. Mueller's new exhibit.

Mr. Coyle: I have no objection, your Honor.

The Court: All right. The clerk will do it—do you want the clerk to do it?

Mr. Alsup: Yes, if you would, please.

[fol. 1956] The Clerk: What page?

Mr. Coyle: If your Honor please, I would make the suggestion—

The Court: Just a moment.

Mr. Coyle: I would make the suggestion that maybe we could edit these things out of court and submit the edited versions.

The Court: I should think probably you can. Are there many of these, counsel?

Mr. Alsup: That is the last one, your Honor.

The Court: All right. The problem is over.

The Clerk: You want lines 10, 11 and 12—how far down on line 12? Is that under the caption Thriftmart?

Mr. Alsup: Yes.

The Clerk: Beginning "I have noted"?

Mr. Alsup: Yes.

The Court: That is to go out down to where?

Mr. Alsup: Down to the end of the sentence.

The Clerk: To the end of the sentence. Want me to make the change?

The Court: Yes, please.

The Witness: That is Exhibit BA, your Honor.

By Mr. Alsup:

Q. Mr. Von der Ahe, you were in court today?

[fol. 1957] A. I was.

Q. You heard the testimony of Mr. Richard Dick and Mr. Craun, Kenneth Craun?

A. I did.

Q. These gentlemen testified, Mr. Von der Ahe, that Von's has a competitive advantage by reason of its ability to make quantity purchases. And I ask you whether, in your opinion, the merger of Von's and Shopping Bag in March of 1960 gave you any greater competitive advantage than you had prior to the merger?

A. The answer is absolutely not.

Q. Would you state your reasons, please

A. The Von's Grocery Company, prior to the merger, was able to buy in the largest wholesale quantities to get the maximum discount.

So, too, the Shopping Bag Food Stores were able to buy—I am speaking of dry groceries now—in the largest wholesale quantities, or carload lots, as we call it, which also enabled them to get the maximum discount.

So as the result of the merger there has been no additional advantage to Von's in the purchase of food stuff.

Q. Would you state, Mr. Von der Ahe, what the requirements are for membership in and service by Certified Grocers of California?

A. Certified Grocers will accept for membership any [fol. 1958] firm who will purchase groceries from them, make the deposit and—which is normally a two weeks, approximately a two weeks purchase, which is a deposit required to just guarantee the account.

But beyond that I know of absolutely no restrictions to become a member of Certified.

Q. Mr. Dick testified this morning that there must be some advantage to you in buying direct or otherwise you would make all your purchases from Certified, or words to that effect. Would you state what the fact is?

A. I might say, Mr. Alsup, that at the present time we are members of Certified Grocers. So is Shopping Bag, or so was Shopping Bag prior to the merger.

The advantages in having our own warehouse have absolutely nothing to do with being able to buy groceries at a lower price. The advantages of having the warehouse are purely related only to the procurement and flow of groceries to the stores. In other words, a maintaining and control over inventory.

Q. I think you indicated once before——

The Court: May I interrupt, counsel?

Mr. Alsup: Yes.

The Court: First, will the reporter read that answer back, please.

(The answer was read.)

[fol. 1959] The Court: I would like to ask this question—I take it inventory control is a very important item, is it?

The Witness: Your Honor, when you have more than several units it becomes a matter of concern to management, control of inventory, yes, sir.

The Court: Well, I take it in merchandising buying is just as important as selling, is it?

The Witness: It used to be, but buying is now very stereotyped.

The Court: Is that right?

The Witness: Absolutely. More firms are going over to electric data processing automatic buying, which is just routine re-ordering. And the merchandising through the stores is the important thing.

The Court: May I ask this, have items become so stabilized that the entrances in the market are fewer now, fewer new items enter the market?

The Witness: There are a lot of items being introduced into the market all the time, your Honor.

The Court: Well, how do you go about—

The Witness: Some of them take hold and result in repeat business for the manufacturer and many of them die by the wayside immediately.

The Court: How do you go about determining the [fol. 1960] purchase on these groceries that are added from time to time, what do you do? Try it out on the basis of some formula, advertising or what?

The Witness: It depends on who is vending the product. For example, new items which have been introduced by firms such as Procter and Gamble, or Campbell's Soup or Pillsbury, or standard brands, General Foods, we know immediately—

The Court: Tell that gentleman to take that pipe out of his mouth—take that pipe out of your mouth and retire from this courtroom.

Go ahead.

The Witness: We know immediately if an item is being introduced by these major producing concerns that they will support it with advertising, point of sale material, and they will actually pre-sell the item for us. And all we have to do is stock it on our shelves.

On the other hand, if the item is introduced by a small manufacturer, it is doubtful—maybe it only substitutes or just adds on to an inventory of other labels of similar products, we wait until we are assured that the product will sell in our store.

The Court: Well, may I ask you this, suppose you introduce a new product, how and when do you determine to discontinue it, if it is not a success?

[fol. 1961] The Witness: We take several things into consideration. The movement—and we like to think that an item should move at least one case per week per store—I will admit that we have many items that sell much slower than that. As a matter of fact, your Honor, only 5 per cent of the items in our inventory—and I am speaking of grocery departments now—sell more than one case per store per week. So that we have a large complement of items that do not move too fast.

But when movement gets so slow that it does not justify space in the warehouse, and the gross margin is not sufficient to handle the cost and there are other items that will substitute for it, then we do discontinue the item.

The Court: Well, I take it you run into a considerable number of those items, don't you?

The Witness: We discontinue hundreds of items every year, yes, sir.

The Court: Are you now using a computer system, in other words, a card system computer to keep up with the inventories?

The Witness: Yes, sir.

The Court: Go ahead, counsel.

By Mr. Alsup:

Q. Based on your years of experience in the grocery [fol. 1962] business, Mr. Von der Ahe, do you have any opinion on whether a competitive effectiveness of a particular store depends upon the size of the chain with which it may be affiliated?

A. My opinion is that the quality, or the effectiveness of the store bears no relationship to the number of stores within the chain that it might be affiliated with.

Competition—if I may add this—is on an area basis and a store-by-store basis, within the vicinity of the customer.

And it is the power of that particular store to attract customers within that one area that determines whether it is going to be successful or not.

Q. Your affidavit states, Mr. Von de'Ahe, that the chains have certain advantages and the single store operators have certain advantages. Would you relate what, in your opinion, are the competitive advantages of the single store operator?

A. I believe the single store operator has many advantages, and I can speak from experience, having been a single store operator.

I would say first of all that because of Certified Grocers of California, and because of Orange Empire and Spartan and others, including Smart & Final, a grocer is able to buy his merchandise as low, or in some cases—because of drop shipment arrangements—lower than the chain can have the merchandise in its own store.

[fol. 1963] So I say there is no question but what the independents can own his dry groceries as low or lower.

The independent has the advantage of personal selection on meat products which he buys, and that is very important because no two carcasses are the same. And if a man knows his business he can personally select carcasses which will cut a better percentage than those which a chain gets when they buy the entire lot.

The same thing is true in produce. The right to inspect or select and inspect results in a lesser degree of waste and spoilage, and he is able to actually put in a better produce, if he is of a mind to.

The independent has the advantage of personally supervising his operation by staying on top of it all of the time, with a personal interest in his customers, and becoming a part of the community in which he operates, which is a very tough obstacle to overcome when you are trying to keep against him with a chain with its cold personnel and personnel who have not too much interest in the business.

There are other advantages in being an independent because—I can think of Gilson, who just a year or so ago opened a market out in Encino which is already reputed to be doing seven million dollars, he is an independent operator, he has two stores with a combined total of about ten [fol. 1964] million dollars.

Now, these are boys who have worked hard, they have had vision. But they want to be independent because they know that they just dominate that area as independents.

Q. You mentioned drop shipments, Mr. Von der Ahe. That is another one on me. Will you explain that, please?

A. I will be glad to. A drop shipment is a buying arrangement whereby a seller will deliver a small quantity of merchandise to a member of Certified or Spartan or Orange Empire. And the cost of that merchandise is the same as Certified's cost in their warehouse.

Certified or Orange Empire or Spartan retain the 2 per cent cash discount—if that is on the invoice—and if it is not there mark the goods up 2 per cent. But the end of each six months period when they remit their patronage dividend, that full 2 per cent is rebated to the store.

So the actual result is this—and I would like to give you an example, let's say a store buys 25 cases of tuna, drop ship. The price would be, let's say, \$16.00 a case, we will say. Certified buying 5,000 cases still would pay \$16.00 a case for that tuna. This merchant has it delivered to his store in lots of 25 cases for \$16.00.

The Court: You mean he gets the advantage of delivery expense?

[fol. 1965] The Witness: He saves all of Certified's mark-up, your Honor.

The Court: How about the cartage, there is no cartage charge?

The Witness: No, sir.

The Court: What do you do, pick it up yourself or do they deliver it to you?

The Witness: We do have some drop shipment arrangements and we also have it delivered to our warehouse, which we redistribute.

[fol. 1966] The Court: I see.

By Mr. Alsop:

Q. In a case when you had it delivered to your warehouse and you redistribute it, you have the cost of redistribution?

A. We have the cost of operating a warehouse, plus the cost of storing and redistributing.

Q. Mr. Von der Ahe, there was a period—

The Court: Counsel, I think we have come to the time to recess. Is this an appropriate time?

Mr. Alsup: Yes, your Honor.

The Court: I would like to just ask one question before we do.

What about the situation of a store, Von's Store, Shopping Bag, or Safeway, competing with an independent, insofar as having a greater number of items, and its effect upon a prospective customer who would say, "Well, I would rather go to Safeway because I get a greater selection than I would have if I went to the average independent." I would like to have your comment on that.

Mr. Alsup: Your Honor, I believe that that would be a question that the independent himself could resolve, if he chose to. He can have more items than any Safeway, Ralph's or Von's, if you please, if he wants to buy them. [fol. 1967] Certified has many more items and labels—

The Court: That takes capital, though, doesn't it?

The Witness: It takes capital.

The Court: Tell me this, what kind of capital is involved in an independent store comparable to one of your stores? Forgetting the building, I mean the inventory.

The Witness: The inventory in a store can be manipulated and adjusted, and I have to say frankly that we did, when we were under-capitalized and running one store, we made displays out of corn flakes and Quaker Oats and bulky things that looked big, and there was not too much money invested.

If you want to make displays out of things like salmon at a dollar a can, or Spam or cartons of cigarettes, you are going into more money. It is a question of how you manipulate—

The Court: Yes, I understand. But assuming the normal circumstances, what would you say—let's take one of your stores, one of the Von's Stores, what normally is the inventory in one of those stores, in dollars?

The Witness: Our inventories, your Honor, run from \$40,000.00 to \$150,000.00.

The Court: I see.

[fol. 1968] I think at this time, counsel, we had better take our recess.

I take it from the way it looks we will finish it tomorrow, is that correct?

Mr. Alsup: I would think so, your Honor.

Mr. Coyle: I think so, your Honor.

The Court: I wish that you gentlemen—I know that you have read all these affidavits, but I wish that you could impart that knowledge to me without making it necessary for me to read them. I suppose that is one of the problems of sitting in this particular position.

Do you have any idea how there could be a shortcut?

Mr. Coyle: I will think about it tonight, your Honor, and maybe we will have an idea tomorrow.

The Court: All right. Otherwise I will have to go through all of them.

Mr. Alsup: As you know, we prepared a summary, your Honor, and while we think they are all good——

The Court: But I don't want to have one of you come in after I have arrived at a decision and say, "Well, the judge didn't read all of these affidavits and all of these documents"—you know, the winning side doesn't complain, it is the loser that always complains.

So at the moment I am beginning to believe I will have [fol. 1969] to read all of them.

Mr. Alsup: Reading the government's affidavits from industry witnesses is easy, because they are stereotyped.

The Court: I see. All right.

We will stand in recess until 10:00 o'clock tomorrow.

(Whereupon, at 4:34 o'clock p.m., Wednesday, June 12, 1963, court was in recess until 10:00 o'clock a.m., Thursday, June 13, 1963.)

[fols. 1970-1972] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

[Title omitted]

Transcript of Proceedings—June 13, 1963

* * * * *

[fol. 1973] LOS ANGELES, CALIFORNIA, 10:00 A.M.

The Court: All right, gentlemen.

Mr. Alsup: Your Honor, we call Mr. Von der Ahe to the stand.

—

THEODORE A. VON DER AHE, the witness on the stand at the time of the adjournment, resumed the stand and testified further as follows:

Direct examination. (Continued)

By Mr. Alsup:

Q. Mr. Von der Ahe, yesterday we were discussing Certified Grocers. Can you tell me if Von's, your company, ever was a member of Certified Grocers?

A. I didn't hear the whole question.

Q. Can you tell me if Von's was a member of Certified Grocers?

A. Yes.

Q. When did it become a member of Certified Grocers?

A. I believe the year was around 1934, when we first applied for membership and were accepted.

Q. And how long did you remain a member of Certified Grocers?

A. We remained a member until 1949.

Q. Did you have any position in Certified Grocers, official position?

[fols. 1974-1975] A. I was a director from approximately

1937 until 1949. And I was the chairman of the board from 1945 until 1949.

Q. Would you state the reason why your company withdrew from Certified in 1949?

A. In 1949 we had approximately 16 or 17 stores. And we found it necessary to do some storing or warehousing of merchandise outside of Certified. And Certified did have a rule that no member could be both a direct buyer and a member of Certified at the same time.

The Court: By "direct buyer," you mean to purchase other than at Certified?

The Witness: That's right, your Honor. In other words, they wanted 100 per cent loyalty and support from all of their members. And they would not tolerate a member carrying water on both shoulders, so to speak, and their policy was that you either supported Certified completely or you resigned from Certified.

And as the result of that policy, and not caring to embarrass Certified because of my position, we did resign in 1949 to engage in warehousing operations of our own.

[fol. 1976] Q. Did you thereafter rejoin Certified?

A. Yes. Certified modified its policy, and some years later we again rejoined Certified.

Q. And you are a member of Certified at the present time?

A. And we are a member at the present time.

Q. Yesterday, Mr. Von der Ahe, you were discussing the matter of drop shipments, which members of Certified may obtain, and I gathered that is direct delivery from the manufacturer to their retail stores; is that correct?

A. That's correct.

Q. Can you tell us whether or not smaller stores, such as a Mom and Pop store, could take advantage of this drop shipment situation?

A. The answer is the drop shipment method is available to any member of Certified Grocers or Orange Empire or—it is available to any of these members who are in a position to use it. Many of the larger supermarkets, and I know of one very well run chain here that uses drop shipments as its principal means of supply for many years, and that was because they had large back rooms in their markets

and they had merchandise purchased at a central plant, which would be distributed to all of their markets. In direct answer to your question, I would say it depends upon the ability of the store to use the quantities that were delivered in the minimum drops, drop shipments.

[fol. 1977] The Court: Pardon me. There has to be, I take it, a minimum in drop shipments to cut down the expense of cartage, is that the idea?

The Witness: That's right, your Honor. It varies with the item, I might say.

I cited the example yesterday that tuna was being drop shipped in normal quantities of 25 cases. I do know of instances where they have been drop shipped in as small lots as five cases.

The Court: That would involve the problem of a small grocery store having storage space; is that right?

The Witness: Storage space, yes, sir, and the ability to use a minimum quantity within a reasonable length of time.

You see, our business is one where a smaller operator can actually use the supplier's money to finance himself, as long as he keeps turn-over in the picture.

The Court: What is the 2 per cent—30 days, 60 days, what is it?

The Witness: It depends, again, on the item. Normally it is 2 per cent 10 days. There is also a 2 per cent 30 days. And there are some rare instances where 2 per cent extends for even a longer period than 30 days, but they are rare. Usually 10 to 30 days.

By Mr. Alsup:

Q. A very large number of the government industry [fol. 1978] witnesses, Mr. Von der Ahe, had gross annual sales of under \$500,000; would such retailer be able to take advantage of this drop shipment situation you are talking about?

A. Frankly, in my opinion, it would not be feasible nor practical, when your sales are that small, to try to engage in a buying function. This is the purpose for such organizations as Certified, Orange Empire, and the rest of them,

and they can supply the needs of those smaller stores without the store tying up its capital in merchandise.

Q. Various of the government witnesses stated in their affidavits, and in their depositions, Mr. Von der Ahe, that while they could get dry groceries through Certified virtually the same as any of the larger chains, they cannot buy their meat, produce, or dairy products through Certified or Orange Empire, and thereby the large chains have a competitive advantage. My question to you is: If there is such an advantage, has there been any change in that situation as a consequence of your merger with Shopping Bag?

A. Absolutely none whatsoever.

Q. Based on your knowledge of the industry, is there a competitive advantage to the large chain in the purchase of meat, as compared to the single store operator?

A. I would like to say, Mr. Alsup, that there might [fol. 1979] possibly be a competitive advantage to large buyers in the purchase of meat, pricewise only, and that would be so insignificant that it is nominal at the most.

Q. What do you mean by that, Mr. Von der Ahe?

A. I would say that a packing house might charge a half a cent to one cent more for a carcass of beef when it is bought in one unit as against when a large buyer would go in and buy a hundred sides or 500 sides. But I would like to further add that the competitive advantage is more than offset by the advantage the small buyer has by being able to personally select and cream or take what we call the show beef out of the packing house, which in turn will result in a better cutting percentage. So the over-all result actually, I would say, would be in favor of the man who can personally select what meat he buys.

[fol. 1980] The Court: May I ask a question?

Mr. Alsup: Yes, your Honor.

The Court: Do the chains and the—first, let me ask you this question: How many sources are there, to your knowledge, of meat in this area?

The Witness: I don't know, your Honor. It is almost unlimited. We have packing house row, our buyers and everyone else's go up and down the row selecting and purchasing meat.

The Court: Is it highly competitive, that is, the sale of meat?

The Witness: I would say so, yes.

The Court: Well, you have, I take it, all the large concerns, the nationally known concerns here, do you? Do you have a Swift, Armour, for example?

The Witness: We have Swift—I do not believe Armour is any longer in the picture.

The Court: How about some of the others, name some of them.

The Witness: Well, most of the beef killers now are independent firms that operate on the market in packing house row. The larger firms, such as Armour, Cudahy and et cetera are not in this market of killing beef any longer. Swift has remained and I believe Wilson has just come back with a new plant. I am not sure whether they kill [fol. 1981] beef or not.

The Court: Would you have any idea how many of these beef people are in this area?

The Witness: I would make a rough guess between 20 and 30.

The Court: Very well.

By Mr. Alsup:

Q. Now, you referred to meat——

The Court: One other question, counsel.

Mr. Alsup: Yes, your Honor.

The Court: Are you aware of generally—do the chains buy from the same people, or similar packers, as the independents?

The Witness: For the most part they do, yes, sir.

By Mr. Alsup:

Q. Now, how about the produce situation, Mr. Von der Ahe?

A. The same situation that obtains in the meat industry also exists in the produce industry. By that I mean a small buyer again can personally inspect and select merchandise he buys, whereas the large buyer is unable to do so. He can only spot check—and believe me we do find

many, many time of deliveries to our company that are rejected because the load, as such, is not as the sample of what our buyers intended to buy.

[fol. 1982] But the small buyer on the job, buying his own produce, putting it on his own truck, has a much better quality control over produce than we will ever have.

Q. How about prices?

A. Prices, it depends upon the item that is purchased. And it is a variable thing, depending upon the time of day and the amount of merchandise on the market and so forth.

We do have what is known as a late market here, in which all unsold produce, or all produce which is unsold by a certain time becomes known as the late market, and it is sold at distress prices by the commission merchants who must get rid of it for that day. And an alert buyer can take advantage of that late market and own his merchandise much lower than the chain, who cannot take the gamble of waiting for the late market, but who must buy his produce at the going price at the time the merchandise is there, so that he can redistribute to the stores.

Q. I think you will find—

A. There is much money to be made in the late market, and one of the best examples of people who avail themselves of it is a Japanese partnership called Hada and and Mori, who operate the largest market in Bellflower. They are the most successful independent in the whole area. As a matter of fact, they run the best store in the whole area. And they shop nothing but the late market. [fol. 1983] And the chains and other stores just can't keep up with them. They know their business and it is just impossible to compete with them in produce.

Q. I think you pointed out in your affidavit, Mr. Von der Ahe, with respect to hard produce, which I gather is potatoes, onions and that sort of thing, sometimes the direct buyer of a chain has an advantage because he can buy in carload lots direct from the farmer, is that correct?

A. I would not deny that the carload of hard produce, onions or potatoes, and things of that nature, can be bought direct, which eliminates going through a commission merchant.

But to offset that we must take those goods into our

distributing center, warehouse them and redistribute them. So we have a cost on top of our direct buying.

Q. Did you do some of this direct buying of hard produce prior to the merger with Shopping Bag?

A. Yes.

Q. And did the merger with Shopping Bag give you any advantage in this respect?

A. It gave us no advantage at all. It did not change the status a bit.

Q. Mr. Von der Ahe, have you read the affidavits of the various government witnesses?

A. I believe I am familiar with most of them, yes.

[fol. 1984] Q. Have you read the affidavit of Joe DeSilva?

A. Yes, I did.

Mr. Alsup: Could I borrow yours, counsel?

The Court: You can borrow mine, if you wish.

Mr. Alsup: I would like to, your Honor.

The Court: Which group is it in?

Mr. Coyle: I think we have a copy.

The Court: All right. Fine. By the way, I can't find my list of the defense exhibits, somehow I must have—you had a list filed with me, didn't you?

Mr. Vaughn: Yes, your Honor, we did.

The Court: It may have gotten into another file.

Go ahead, counsel.

Mr. Vaughn: Again I have an office copy.

The Court: No, no, it won't be necessary. We will locate it. It may be in some of the other files in my chambers—here it is, I found it, stuck inside of one of the others.

By Mr. Alsup:

Q. Mr. Von der Ahe, Mr. DeSilva's affidavit points out the executive secretary of the Retail Clerks' Union, Local 776, and they have jurisdiction over the retail clerks employed in most of the grocery stores in this area, and he states on page 3 of his affidavit, Mr. Von der Ahe, that Hughes Markets was founded in 1952, and I am [fol. 1985] quoting—

“ * * * by Joseph P. Hughes, former vice president in charge of field operations for the Fitzsimmons

Stores, now Thriftmart. He began with one store purchased from Thriftmart, soon thereafter purchased two more stores, one independent and one Thriftmart, and since that time he has acquired several other stores " " " "

Do you have any personal knowledge as to whether or not that statement is accurate?

A. I believe it is.

Q. And do you know what stores Mr. Hughes purchased from others?

A. He acquired three stores from the McDaniel chain at the time that they were in financial trouble.

Q. And when was that?

A. It has been within the past couple of years, I couldn't exactly give you the date. But I would make a guess around 1960 or 1961.

Q. You think—

A. At the time McDaniel's was getting into trouble.

Q. And McDaniel's went into bankruptcy thereafter?

A. Yes, they did.

Q. And how about these stores that he acquired, according to his statement, from Thriftmart; do you have [fol. 1986] any knowledge of that situation?

A. I don't believe that Mr. Hughes acquired his stores from Thriftmart. I believe that particular reference is to a store up on North Highland which had been occupied by a Thriftmart.

Thriftmart had decided not to renew the lease, even though they had an option to do so. And Joe Hughes went in and bought the vacant building and the property on which it was located. He remodeled the store and opened it as a Hughes Store.

Q. Mr. DeSilva's affidavit states on page 4 that Mr. Edward Fox left Mayfair Markets in 1954 and started the chain of Fox Markets by purchasing grocery stores from Mayfair and LaMarrs and later acquired other Mayfair stores, the Roth Market chain, the Yor-Way Market chain, the Iowa Pork Chops chain, and other acquisitions, and that in 1961 Fox filed in bankruptcy. Does that comport with your knowledge of the situation?

A. Yes, that is true.

Q. Do you have any knowledge as to the reason for the bankruptcy of Fox?

A. I believe it is generally well known that Fox expanded too rapidly. They exercised very poor judgment in the selection of some of their sites, and their acquisitions, they paid too much for their acquisitions. They did not [fol. 1987] have good management, nor were they good operators.

The Court: Were they experienced management?

The Witness: They were experienced management, yes, sir.

And they were considerably underfinanced—

Mr. Coyle: This is pretty much hearsay testimony—

The Court: What is it, counsel?

The Witness: They were pretty much underfinanced—

The Court: What is it, counsel?

Mr. Coyle: This is pretty much hearsay testimony, Mr. Von der Ahe is testifying to things that happened to Mr. Fox—

The Court: Well, you haven't objected up to now. What am I supposed to do, interrupt and stop him?

Mr. Coyle: I am objecting now.

The Court: Well, there is nothing before the court now. Go ahead, counsel.

By Mr. Alsop:

Q. Mr. Von der Ahe, Mr. DeSilva states that Mr. Jack Kennedy left the Jim Dandy Markets Company to establish the Yor-Way chain in 1953, that he began with purchasing a Mayfair Market and later acquired several more, and in 1958 Yor-Way acquired C. S. Smith's Metropolitan Mar- [fol. 1988] kets. After Mr. Kennedy's death in 1961 the stores were all sold.

Do you have any knowledge at all as to the reasons for the demise of the Yor-Way?

Mr. Coyle: This is hearsay.

The Court: Well, counsel, you state your objections in proper form and I will be prepared—but you are ruling, you are not objecting—

Mr. Coyle: I object, your Honor—

The Court: You are ruling, you are not objecting.

Mr. Coyle: I object, your Honor, on the ground that this is hearsay.

The Court: I think it is, counsel.

Mr. Alsup: Very well, your Honor.

The Court: But I don't think—what are you proving by this testimony? Are you trying to refute that these people were put out of business because of lack of competition or because of competition?

[fol. 1989] Mr. Alsup: No, your Honor. What I was purporting to establish is what Mr. Von der Ahe has told me, that when a company expands rapidly with inadequate capital and without a deep management staff, and something happens to the leader—

The Court: That is about as obvious as anything that I know of. That happened in 1929. Everybody was expanding, as they are doing today, and they were talking the same language that they are talking today, we are headed to a new era.

We will head for it all right. When this new generation wakes up and finds what it is, they will be surprised to learn that over-expansion, inexperience, leads to one thing, and I don't think you need to prove that to this court. I know that from just plain experience.

Mr. Alsup: There was one other point in that connection—

The Court: The Fox situation, everybody in town that keeps up with what goes on knows what happened in that case.

Mr. Alsup: I think that is true of McDaniel's and Yor Way.

The Court: McDaniel's, also.

If you want to put it in the record in some other form, [fol. 1990] I will let you do it, but I suppose this is hearsay.

Mr. Alsup: I am perfectly willing to develop the matter, your Honor.

The Court: People think nowadays experience is unnecessary. All you have to do is go in the shoe business and buy some shoes and be prepared to sell them. Sizes mean nothing to them, last or anything else, but you just become a shoe man overnight. This is the new era in lack

of experience. In other words, don't be hampered by experience, never let experience hamper you.

Go ahead.

By Mr. Alsup:

Q. Do you know of any other of the larger chains in this area which had financial difficulty in 1961, 1962, Mr. Von der Ahe?

A. We have mentioned Fox, we have mentioned McDaniel's, we have mentioned Yor Way. I do know that the Greater All American Markets had some rough sledding for a while, as a result of the death of their founder, Mr. Blaine Hutchinson, and they were compelled to sell off quite a few of their units before they were able to introduce some efficiencies, and I am happy to say that the markets are now returning nominal profits.

Q. Mr. Von der Ahe, have you personally checked the stores of various of the government industry witnesses?

A. I believe I have visited most of them, yes.

[fol. 1991] Q. When did you do this?

A. I have been making this a project, as a matter of fact, for the last two or three months, and I have from time to time gone on different missions and visited the various stores of the government witnesses.

Q. Can you state what stores of what government witnesses you observed?

A. I observed the store operated by Mr. Jack Swerdlick, I believe is his name, who I believe calls his operation the Value Ranch, on East Olympic Boulevard. I observed the market operated by a Mr. Kasper——

Q. Chitjean.

A. —just a block or two east of Swerdlick's store. I visited Jack's Market, I visited Jenkins Market, I visited Taylor's Market in El Monte, I visited the Gertmenian's, I visited Carpenter's, I visited Logue's Star Market, I visited Rod Irvine's—Logue is not Star Market—Rod Irvine's Star Market, I visited Allen's Market in Reseda, in Northridge; I visited Dick's Market on North Figueroa; Craun's Market in South Downey; I visited a market in Van Nuys, Mekjian, I believe his name was. And there

might be several others, but I at least visited that group of stores.

Q. Would you give us your impression as a grocer of this Swerdlick's Value Ranch Market?

[fol. 1992] A. Swerdlick's Market is in a small area on the east side of Los Angeles, which caters almost principally to the Spanish-Mexican trade. It has one entrance, which is a double door approximately five feet wide. The appearance is very dirty, the fixtures are extremely old, antiquated; he does a very poor job of merchandising, and practically no advertising, or no aggressive operating at all. I would say this is not a representative market of the food industry in Southern California.

The Court: Counsel, let me ask you this: What is the purpose of this particular type of testimony? In other words, somebody has made an affidavit, and I assume in his affidavit he has probably said that he thinks or at least in his opinion there will be a substantial lessening of competition—is that correct?

Mr. Alsup: That's correct.

The Court: What does it prove to prove he has, let's say, a one-horse shop, what does it accomplish? Does it go to the range of his opinion, is that what you had in mind?

Mr. Alsup: I had that in mind. In the Brown Shoe case the government in their brief on appeal referred no less than nine times to the crucial importance of industry witnesses. The Supreme Court opinion, as you know, attaches great importance to industry witness testimony, and [fol. 1993] it is my opinion—I have seen many of these stores, as well as Mr. Von der Ahe—that the great bulk of the government witnesses are not truly representative of what is the grocery business in this area.

The Court: The reason that I am asking is that a person who milks one cow may be an expert on that cow and milking, but running a dairy might be another thing. I don't know, just exactly. I suppose it is a question of evaluation of their testimony, and I suppose it is identifying their background. Is that what you are doing?

Mr. Alsup: Yes.

Mr. Coyle: These witnesses were all deposed. They

could have done that in the course of their depositions. This is no time to be doing that.

The Court: I suppose they could have, counsel, but I guess I will let them do it now, if counsel thinks it is of any value.

I assume that in the depositions, in the affidavits, it doesn't bring out the type of store he is operating?

Mr. Alsop: It brings out the type, the size of store, the total volume of sales, your Honor. I propose to show through Mr. Von der Ahe that most of these people, government witnesses who expressed these opinions, are not truly representative of the grocery business, do not run a [fol. 1994] first-class operation, and if anyone is hurting them, it is themselves.

The Court: All right. I will permit the testimony, but I hope——

Mr. Alsop: I won't go into all of them, your Honor. I will ask one or two more, if I may.

The Court: I think probably from their affidavits and from the depositions, where there are depositions, it would be discernible pretty quickly their size and operation, won't it?

Mr. Coyle: Even in the statements we have the size and dollar sales, so it will be discernible there.

Mr. Alsop: The statement doesn't indicate, your Honor—some people can have a very small store, your Honor, but can make it very clean and attractive and attract customers. Someone who runs a very poor operation obviously is not going to attract customers, and is more likely, in my opinion, to blame.

The Court: If they give credit, they can get customers. It is a question of how much credit they give and how long they can stay open. I know many stores that were very successful by giving credit. Of course they didn't last long, but they were very successful for a time.

I don't want to restrict you. Any relevant evidence [fol. 1995] that may help the court in deciding this.

Incidentally, before I forget it, I hope you gentlemen have cited all the District Court cases that have come down since the Brown case. Have you both done that?

Mr. Coyle: I think probably between our two briefs we have cited all of them.

The Court: That's what I want to be sure of.

Mr. Alsup: I believe we have, your Honor.

The Court: It isn't that I will necessarily follow them, but I do learn something in reading the other man's opinions.

Mr. Alsup: As your Honor knows, in our brief in referring to these District Court cases which have come down since Brown Shoe, the great bulk of them are not yet reported in the Federal Supplement.

The Court: I understand that.

Mr. Alsup: They are reported in the 1963 trade case CCH series, and if you would like us to——

The Court: I assume that the Federal Supplement should be along pretty quickly.

Mr. Alsup: It should be along soon, and we can give you a list at that time.

The Court: If I have any difficulty, I may call on either one of you to help me out in that regard. But I [fol. 1996] assume that they will be coming forward rather promptly.

Mr. Alsup: Yes. I checked, as a matter of fact, Saturday, your Honor, and again Monday, and they have not yet come through in the Federal Supplement. I expect they will be soon, and we will give you the citations.

The Court: All right. Go ahead, counsel.

By Mr. Alsup:

Q. How about this store of Mr. Kasper Chitjean, known as Kasper's Market, on East Olympic Boulevard, Mr. Von der Ahe?

A. This is in the same neighborhood as Mr. Swerdlick's store. It is a block or two farther to the east. Even though it is on Olympic Boulevard there is a large sign on the top of the building that reads East Ninth Street Market. It, again, is a very small store catering exclusively to the small grouping of Mexican-Spanish homes in the area——

Mr. Coyle: If your Honor please, there is no foundation to show how this witness knows who it is catering to.

The Court: I think I can walk into a store and I could tell you in 15 minutes what type of people they are catering to. Don't you think you could?

Mr. Coyle: I don't know.

The Court: I am sure I could, and I think you could. All you have to do is stand in there and watch the customers, and I think—it is an opinion, that is all it is, and [fol. 1997] I could reject it or accept it. I will allow it.

I think you could go to Long Island at a certain spot and tell within a few minutes that the class of trade was quite well to do. It wouldn't take you long, as you see the cars roll up and the people who are going in the store. I think these are matters that are under general observation. Go ahead.

The Witness: Again, it is a very small operation. It looks like it is a one-man operation, actually, because there was only one man working the entire store when I was there, outside of the meat department, which a woman was acting as the butcher, and the cuts of meat were cut, designed for Mexican trade, Mr. Coyle. Beyond that, I have to say that it is strictly neighborhood. It cannot possibly serve any area beyond its immediate neighborhood, which could be measured just in blocks.

The Court: By just a quick look at the store, from your experience can you make an estimate of the inventory, the value of the inventory in the store?

The Witness: Your Honor, offhandedly I would say that his inventory was in the neighborhood of \$5,000.

The Court: Well, is it unusual for a man who has been in the grocery business for 30 or 40 years to be able to walk into a plant, or a store, and make an equipment estimate and hit it pretty close on inventory?

The Witness: Yes, sir.

The Court: There is nothing unusual about that?

The Witness: No, sir, your Honor. Over years of experience I believe that we are qualified to walk into a store and not only evaluate inventory, but make a rather accurate estimate of the sales that the store does. And we do that by looking at the amount of perishables that the store has, because we know he has to sell them.

The Court: Either sell them or throw them away; is that right?

The Witness: That's right.

By Mr. Alsup:

Q. How about the Jenkins Market out in El Monte that you mentioned, Mr. Von der Ahe?

A. Frankly, Jenkins Market has to be seen to be believed. I could not conceive of this market at all, because it looked to me as though it were about 20 feet wide and about 40 feet deep; the smallest market that I have ever seen in my life, frankly. He is catering just—I might add that this little market is located right in a cluster of homes, and he does cater to that little grouping of homes right around him.

[fol. 1999] The Court: What is the location of that store?

Mr. Alsup: 9701 Cortada in El Monte.

The Court: Where is that?

Mr. Alsup: El Monte, your Honor.

The Witness: Your Honor, if I may explain, it is between the San Bernardino Freeway on the north, and I think it is Garvey Boulevard on the south, east of Rosemead Boulevard. There is just four natural barriers and a little cluster of homes there and this little market sits right in the middle of them.

Mr. Coyle: If your Honor please, at this point this witness has operated a number of other stores before moving into this one, so—

The Court: Well, does the affidavit show that, counsel?

Mr. Coyle: I think the deposition does, your Honor.

Mr. Alsup. The deposition does, your Honor.

The Court: That will certainly be considered. In other words, he is making it look—making it sound like he has got nothing but squatter's rights there now, but I assume that his affidavit and deposition will clarify the background.

Mr. Alsup: This is a witness, your Honor, who testified at deposition "Some people have it and some don't. [fol. 2000] I guess I don't."

The Court: Well, that is profound.

Mr. Alsup: Very. Just two more, if I may, your Honor.

Q. Have you observed the stores of Mr. Dick and Mr. Craun who testified yesterday?

A. I have.

Q. Will you describe those stores?

A. I will start with Mr. Dick's store, which is located on North Figueroa Boulevard in what we used to refer to as the Highland Park district. The store has both a front and a rear entrance. It has a service bakery department, a service meat department, and the store appeared to be rather well run. It is clean——

The Court: Does it have parking?

The Witness: It has parking in the rear, no parking on the front because it is built right up to Figueroa Boulevard.

The store appeared to be well run, it is neat, it is clean. The only thing that gave me the shivers when I was in there was a fear that I wouldn't want to be there in case a fire broke out, you couldn't get out of the place.

But beyond that the store appears to be doing a good job serving the neighborhood.

[fol. 2001] By Mr. Alsup:

Q. How close is——

A. It is not, I might add, a supermarket building as such. There is market shops underneath some apartment houses on the second floor.

The Court: That is the one, as I remember, that did a very substantial volume, is that right, counsel?

Mr. Alsup: I think——

The Court: Was it around three million he said, he testified?

Mr. Alsup: I believe he testified one million four hundred thousand.

The Court: Was that the one that said the one million four?

The Witness: Yes, sir.

The Court: Yes, I recall.

By Mr. Alsup:

Q. How far is that store from the nearest Von's or Shopping Bag store, Mr. Von der Ahe?

A. I believe the nearest Shopping Bag store would be in Eagle Rock, which is at least three and a half miles distant.

Q. Von's, is there a Von's store in that area?

A. There is no Von's store in that area.

Q. How about Mr. Craun's store?

[fol. 2002] A. Mr. Craun's store is in the south end of Downey, which again is a very small store. I estimated it to be in the neighborhood of five to six thousand square feet. It is neat, it is clean.

I observed that it had absolutely no prices on its shelf molding, which I thought was very unusual because all markets indicate prices for the products they are displaying.

It has a service meat department, it has old fixtures but it is well kept up.

The parking is also to the rear for the most part, with about ten spots in front. But the market itself, it is inviting.

Q. What other stores are in the area of Mr. Craun's store?

A. Almost directly across the street is a large Alpha Beta market.

Q. How close is the nearest Von's or Shopping Bag store?

A. Well, I would say the nearest Shopping Bag would be at the corner of Firestone and Lakewood. And my guess would be in the neighborhood of a mile and a half to two miles.

And then there would be a Von's market directly north on Paramount at Florence, which would be maybe two and [fol. 2003] half miles distant.

Q. That latter Von's store which you mentioned is directly across the street from the government witness Don Fairbank's store, is that correct?

A. That is correct.

Q. Mr. Von der Ahe, the government witnesses, industry witnesses, in their statements assert that in their opinion if this merger between Von's and Shopping Bag is permitted there will probably be other mergers between and among the large chains and this will probably substantially lessen competition and tend to create monopoly. What is your opinion with respect to that matter?

A. My opinion is that the contention is not supported by fact, because, first of all, the Von's and Shopping Bag merger was a consolidation of two firms which did not compete with each other.

I cannot think——

Q. You are referring to competition between the particular stores?

A. Between particular stores. And I cannot think of any other two firms in this area who could merge without resulting in some very serious overlaps.

Q. Have there been mergers in the past, Mr. Von der Ahe, which have not worked out very well for the merging companies?

[fol. 2004] A. Well, I can think of, naturally, Fox Markets again, which acquired quite a few markets. And I will not say that their results were satisfactory.

And you have McDaniel's also acquired stores with disastrous results.

Yor-Way did the same thing.

I can think of one back East which involved an acquisition by Colonial Stores of Albers Markets——

Mr. Coyle: I object, your Honor——

The Court: On what grounds?

Mr. Coyle: I object because this is an acquisition of a large market back East, he is talking about back East——

The Court: I suppose it is. Sustained.

By Mr. Alsup:

Q. In depositions of at least two, and perhaps more, of the government industry witnesses, they testified that—that is Mr. Fleishman and Mr. Palmer complained about a general price reduction which Von's and——

A. May I finish answering my last question, please?

Q. No, I am sorry——

The Court: No. I sustained an objection to that.

The Witness: Your Honor, I think——

The Court: You were talking about something outside of the area, so I sustained an objection.

Go ahead, counsel.

[fol. 2005] By Mr. Alsup:

Q. Did you have something to add, Mr. Von der Ahe, which would be confined to the Los Angeles metropolitan area?

A. Yes, if your Honor will permit me.

The Court: Yes. I will permit that, yes. Go ahead.

The Witness: I was thinking of Thriftmart, who have acquired several stores, and subsequently disposed of most of them.

I can think of Alpha Beta, who acquired Raisin Markets, they had considerable difficulty integrating them into their system.

I also wanted to mention those two, your Honor.

The Court: All right. Go ahead, counsel.

By Mr. Alsop:

Q. I mentioned that government witnesses Fleishman and Palmer, Mr. Von der Ahe, in their depositions complained that a general price reduction which Von's instituted in this area in July of 1961 had reduced, hurt them in some way. Would you state the reasons for that general price reduction which occurred in 1961?

A. Yes. In 1961, in July as a matter of fact, the management of our company realized that retail prices as such were too high. And the reason they were too high was [fol. 2006] in order to provide an umbrella for ridiculous price cuts on advertised items.

This was the time, if you will recall, that we were selling coffee as low as 19 cents a pound with a \$5.00 purchase, sugar, five pounds for 19 cents and so forth, which was anywhere from 25 to 50 cents per unit below cost.

In order to sustain that type of ridiculous merchandising the shelf prices were gradually creeping up.

We also knew that in September there was going to be passed, or signed into law in the State of California under the Unfair Trade Practices Act, a provision which prohibited limiting of advertised specials because the—

Q. That is the quantity a customer could buy?

A. Limiting of quantity of items to a customer. This law made it a per se evidence of the intent to injure competition by limiting.

And with these factors in mind we reduced the prices on several hundred staple grocery items, at the same time we discontinued ridiculous ads of a cut-throat nature.

And it actually had the effect of stabilizing the market. And it might be interesting to note that for the year 1961,

July, the BLS index throughout the nation showed an increase in the cost of food stuff, with the exception of Los Angeles, which showed a decrease. We think the con-[fol. 2007] suming public benefited by that maneuver.

Q. Now, Mr. Von der Ahe,—

A. It actually raised our gross margin, and I am sure it raised the gross margin of every other competitor in this town. It did not hurt them.

Q. Mr. Von der Ahe, would you have been able to make this price cut across the board in July 1961 had you not merged with Shopping Bag?

A. This was a perfectly legitimate business reason to make this merchandising maneuver. We would have done it whether we had been merging with Shopping Bag or not. The merger had nothing to do with it.

Q. Had there been prior experiences where you had reduced prices prior to the merger?

A. Yes, yes—

The Court: We are not getting into a price case, are we, counsel?

Mr. Alsup: No, your Honor. I was referring to the depositions of these two witnesses, and they seem to feel that somehow this merger gave Von's a power to reduce prices and hurt them, although I think both testified they did very well after the price reduction.

Q. Mr. Von der Ahe, your affidavit states that A & P, Safeway, Acme and Food Fair, national chains of retail groceries, are doing business in this area. Can you tell [fol. 2008] us how they rank in size nationally?

A. Nationally, A & P ranks first with sales in excess of five billion dollars.

Safeway ranks second with sales in excess of two and a half billion dollars.

Acme ranks fourth with sales in excess of one billion dollars.

And Food Fair ranks sixth with sales just under one billion dollars.

In that connection I might also add, sir, that Kroger has now announced their intention of coming into this market. And they are the third nationally with sales in excess of two billion dollars.

Q. In your opinion, Mr. Von der Ahe, based on your years of experience in the grocery business, do you feel that Von's is at any competitive disadvantage in competing with stores of these national chains?

A. No, I do not.

Q. In your opinion, do you believe that the single store operators, or the smaller chains can compete successfully with these large national chains?

A. Yes, I believe that they will be able to successfully compete with them.

Q. In your opinion, do you believe that the single store operators or small chains can compete successfully with [fol. 2009] the stores of Von's?

A. Yes, sir.

Q. Mr. Von der Ahe, I will ask you to refer to Government's Exhibit 1.

(The exhibit was placed before the witness.)

The Witness: Thank you.

By Mr. Alsup:

Q. That exhibit, Mr. Von der Ahe, is a list of sources which the Federal Bureau of Investigation of the 20 largest grocery chains in the Los Angeles metropolitian area ranked according to sales in 1958.

Can you tell us which of those chains listed on Exhibit 1 were not doing business in the year 1948?

A. I will try to do so, yes. Going down the list, Food Giant was not in business in 1948.

Fox Markets, Hughes Markets, Shoppers Markets only had one store. McCoy's Markets and Yor-Way Markets.

Q. Tell us if there are any of the stores listed on the exhibit, if there are any, which are no longer in business?

A. Fox Markets are no longer in business. The McDaniel's are out of business.

The Greater All American has sold off quite a few of its stores and the Yor-Way stores are out of business.

[fol. 2010] Q. Do you know what happened to the stores of these concerns?

A. For the most part they have been sold off to individuals and other companies. Some have been closed.

The Court: Well, as a matter of fact, did the so-called chains, haven't they closed a great many stores in the past ten or fifteen years—Ralphs, for example, haven't they closed down stores?

The Witness: Not a great many, your Honor. They have closed stores that they find have been unprofitable.

The Court: Have you closed any stores?

The Witness: Not in the past few years.

The Court: How about Safeway, do they close stores, have they?

The Witness: Safeway has closed a few, yes.

The Court: And I guess Food Giant is relatively new out here, isn't it?

The Witness: Yes, sir.

The Court: Go ahead.

By Mr. Alsap:

Q. Mr. Von der Ahe, would you refer to Government's Exhibit 16?

A. Yes, sir.

Q. Paragraph 90 of that Government's Exhibit 16, which comprises a portion of the answers to plaintiff's request [fol. 2011] for admission of facts states that as of March 28, 1960, Von's planned to construct a new grocery store at Euclid and G Street in Ontario. Is Ontario outside of Los Angeles and Orange County?

A. Yes.

Q. It is in San Bernardino County?

A. San Bernardino County.

Q. Paragraph 91 states that as of March 28, 1960, Von's planned to construct a new grocery store at Imperial Boulevard and Norwalk Avenue in Norwalk. Can you tell us whether that store was constructed?

A. That store has never been constructed. As a matter of fact, that deal is completely dead.

Q. Why was that?

A. The developer had difficulty getting the zone variance or change that he needed to develop the shopping center. And as a result it never was constructed.

Q. Paragraph 96 referred to in that exhibit states that as of March 28, 1960, Shopping Bag planned to construct a new grocery store at the corner of San Fernando-Mission

Road and Balboa in Granada Hills. And the answer admitted the statement stated the lease had been signed with respect to the property at this location, but construction has not yet been commenced. Can you tell us what happened to that proposed store?

[fol. 2012] A. That store was never constructed, or built for Shopping Bag. This store is now leased to and operated by Food Giant Markets.

Q. Why was that turned over to Food Giant, Mr. Von der Ahe?

A. Because Von's prior to the merger, had committed themselves to a lease at the corner of San Fernando-Mission Road and Woodley in Granada Hills, which is exactly one mile east of this Shopping Bag location. Von's was committed beyond a point of stopping the deal. As a matter of fact, we didn't want to. We had a moral obligation to kindly, elderly people whom we had talked into building for us and we just did not want to nullify our lease.

And the Shopping Bag lease, being in a larger shopping center, we knew could be readily disposed of, and subsequently Food Giant Markets did take it.

But the reason was because both of these stores were serving the same community, and we would, in this particular instance, have been competing directly with ourselves.

[fol. 2013] By Mr. Alsop:

Q. I think one of the government witnesses, either Mr. Craun or Mr. Dick, testified yesterday in response to a question of Judge Carr's, that construction of new stores is somewhat like filling stations, they spring up on each corner of every block. Do you agree with that statement?

A. I certainly do not. The economics of each area must be thoroughly considered before putting in a new store. A population count must be taken. We also look at the average income, we look at the nature of the area, whether it is declining or growing, and when we finally compute how much potential grocery volume there is in an area, we divide that by the number of stores already serving it, and if we feel if the area is over-marketed, we do not take a store there. On the other hand, if we develop that a

store would do a good business and be profitable, we do put in a store. But do not fight a battle of numbers, and we try to make sound decisions when we locate a new store.

The Court: In other words, you are not looking for a stand-off in competition; is that what you are saying?

The Witness: That's right.

The Court: Just as an example, I notice at the corner of Third and Vermont there is on one corner Ralph's Store and on the other corner Safeway; is that right?

The Witness: Yes.

[fol. 2014] The Court: What is the philosophy behind a situation of that kind? Is that just a happening, or is it a competitive situation?

The Witness: This, I might say, had I been operating Safeway, I would not have done that, because I would never want to antagonize Ralph's by putting a store right in their front office. However, they are both good stores. It is a very successful operation for Ralph's, and I know it is one of Safeway's better stores.

The Court: It is apparently a highly populated community and two stores can successfully operate?

The Witness: Yes, because of the density of population in the area they can both operate, yes.

The Court: What I was trying to find out, it is not just because the other store was there that the latter store went there; they just thought, I take it from your experience, that it was a good area.

The Witness: That is very true.

The Court: They don't just, from what you know of the business, you don't just go out and just land on a corner because another store is on the opposite corner?

The Witness: That's right. We don't try to match competition store for store in each area.

By Mr. Alsup:

Q. Do you have studies made, Mr. Von der Ahe, prior to [fol. 2015] determining whether or not you will take a particular location?

A. In some instances, yes, we do.

Q. Can you give us an idea of how many locations are offered to you in a week?

A. Well, this is a department over which Mr. Hayden has jurisdiction, but it is a two-position job in our company, we have a real estate head, and he has an assistant, and they both report to Mr. Hayden; but I can assure you that all three of those men are constantly busy checking out locations. We get them through real estate agents, we get submittals through property owners themselves, from developers, and we are constantly checking out locations.

The Court: It take it, Mr. Von der Ahe, that many builders now are agitating, trying to get more building sites and put up more market centers—that is quite a movement now, isn't it?

The Witness: Yes, sir.

The Court: And they do it on borrowed money, I take it, too, don't they?

The Witness: Yes.

The Court: You don't finance any of your buildings, do you?

The Witness: We do not finance any buildings on which we do not own the ground. If we own the ground, we [fol. 2016] also will build the building, your Honor. But we do not loan money, as such, to developers.

The Court: By the way—I guess this is peripheral—they have come to use an expression which to me seems ridiculous, "net-net-net"—to me "net" means net. What does "net-net-net" mean?

The Witness: I believe that is just one way to emphasize that the lessee is going to pay all of the cost, and recurring costs of the property, which means the taxes, insurance, assessments, everything.

The Court: So it is all net, isn't it?

The Witness: It is 100 per cent net, yes.

The Court: Is that term used throughout the country, or is that just Hollywood?

The Witness: I think it is spreading throughout the country.

The Court: By the way, what is the general return expected now on a leased market—8, 9 per cent?

The Witness: The insurance companies will lease a mar-

ket on 7 per cent net-net-net, if you will, please, on their investment. And when you are negotiating with an independent developer, he requires a little more, I might say. The range would be from $7\frac{1}{2}$ to 9 per cent. And in some cases where the location is extremely desirable, we find ourselves paying 10 per cent, all net.

[fol. 2017] This is also, if I may continue, usually against a percentage of sales, your Honor.

The Court: They do usually have a contract after they put a ceiling on, is that right, or flooring?

The Witness: It is a floor. It is a minimum net, which is the floor, against a percentage, which is usually wide open.

By Mr. Alsop:

Q. Speaking of stores located—

The Court: The point that I was trying to bring out, counsel, and I don't know that you intended bringing it out, is that at the present time in Southern California, in this area, all you have to do is mention the word "market" and somebody will try to build one. That's my understanding. So the competitive situation goes beyond just grocery business now; it is easy money, too, isn't it? Isn't that right? A lot of markets are being built just because there is easy money?

The Witness: Yes. Because it is a lease which they funds in good leases.

The Court: I take it sometimes these locations are not necessarily good, but they build the markets and then they have to—they usually have the leases made before they build, don't they?

The Witness: Yes. Because it is a lease which they [fol. 2018] finance.

The Court: They finance on the basis of the lease?

The Witness: Yes.

The Court: A lease is usually 25 years?

The Witness: Usually.

By Mr. Alsup:

Q. Speaking of markets located fairly close to one another, Mr. Von der Ahe, you have a supermarket at Third and Kenmore in Los Angeles?

A. Yes.

Q. Are you building another store in that general area?

A. We are building another store at Olympic and Crenshaw, which will open within the next few weeks.

The Court: That is at least how many miles away?

The Witness: This is what I was going to qualify, your Honor. This is probably two miles away. But we do have a market at Eighth and Irolo. Irolo is just a block or two west of Kenmore, and Eighth is only five blocks south of Third Street. But these two markets are serving two different and distinct neighborhoods.

The Court: There is a fairly heavy density of population in those areas, I take it?

The Witness: Yes.

[fol. 2019] The Court: And it is growing now. I assume there is the beginning of a new era there in apartment houses, is that correct?

The Witness: That is correct.

Mr. Alsup: I have a fondness for that store. When I first came to California in 1941 I lived in an apartment house right next to Third and Kenmore.

The Court: I thought you were going to tell me that you bought some of the bonds.

Mr. Alsup: I wish I had.

Q. Mr. Von der Ahe, will you return to Government's Exhibit 63, page 3—

The Court: I think, counsel, we had better take the recess. We will take a 10-minute recess.

(Recess taken.)

The Court: Proceed, counsel.

By Mr. Alsup:

Q. Mr. Von der Ahe, turning to Government's Exhibit 63, page 3 of that exhibit, it is entitled Minutes of Executive Committee Meeting, Von's Grocery Co., March 29,

1960, that meeting took place the day after the merger was consummated, Mr. Von der Ahe?

A. These minutes are dated March 29, 1960, which would have been the day after the merger was consummated.

[fol. 2020] Q. On page 3 under paragraph 11 of that exhibit, Mr. Von der Ahe, there is a statement:

“Mr. W. R. Hayden was requested to contact several other competing grocery firms to effect a trade of the San Fernando Mission-Balboa site.”

And I ask you if that is the site that you have referred to earlier in your testimony which Food Giant eventually took over.

A. It is.

Q. Immediately following that is a statement:

“He also mentioned that he might be able to make some kind of a deal for the Shopping Bag Garden Grove store.”

Would you state for the record what that had reference to?

A. This actually refers to the Shopping Bag store in Anaheim at the intersection of Brookhurst and Cotilla Avenue. What was discussed was that this store was developed in what was going to be a shopping center, but it never did develop as a shopping center, and the store never was a profitable store, and Mr. Hayden thought that he might be able to make some kind of a deal to dispose of the store.

Q. Was he able to make such a deal?

A. The deal has not yet been made, no.

Q. Mr. Von der Ahe, can you tell us how long in advance Von's Grocery Company contracts for turkeys, we will say, [fol. 2021] for sale in the Christmas season?

A. We have contracted for birds as early as July for both the Thanksgiving and the Christmas season.

Q. Will you tell us, describe briefly how you go about contracting for them?

A. These are arrangements entered into by our meat department, but historically they know about how many birds they are going to require for the holiday season, and when the market looks right they will step in and actually

buy, at a firm price, birds for the entire season. As I mentioned, sometimes they do this as early as July.

Q. Does this result in your getting a better price for the turkeys than someone buying at a later time?

A. In some cases it has assured us of a price which was competitive all year long. And I can recall a few instances where it swung the other way and we actually paid more for our birds.

Q. In other words, when you make the contract it is a firm price and you are stuck with it regardless of whether the price goes up or goes down?

A. That's right. There are many variables in this business, such as, a failure of the Eastern buyers to invade the market and not take off as many birds as they intend to might result in a lowering of the price. Whereas, on the other hand, if they come in in great numbers, and the Army [fol. 2022] or the Services, rather, take an awful lot of birds out of this area, the price does go up. It is for this reason that we seek to get a commitment and we make a commitment so that we know what our cost is going to be for the season.

Q. Did you do that before the merger with Shopping Bag?

A. We have always done it.

Q. One of the Government witnesses, Mr. Palmer, testified in his deposition, Mr. Von der Ahe, that because of your great number of stores you might decide to run a special, for example, on corn, and garner the market, and if he decided to run a special on corn the same week end it might not be available to him. What do you say to that?

A. Frankly, I do not believe that Mr. Palmer considered what he was saying when he made that remark, but I think it is ridiculous to assume that any firm in this area could corner the market on any item of produce. Let us assume that our market share is between seven and eight per cent of this area, it would be inconceivable to think that we could ever use a hundred per cent of any item of produce that would be brought into this area. It just doesn't make sense in my book. It has never happened, and I don't think it ever will.

[fol. 2023] By Mr. Alsup:

Q. Mr. Von der Ahe, would you state, based on your experience, what in your judgment are the factors which draw particular customers to a particular grocery store?

A. You mean why does one customer trade with one store to the exclusion of another?

A. Yes.

The Court: I don't think it necessarily follows that it is an exclusion, but in the main, does the main part of trading, isn't that about what it amounts to?

The Witness: I believe I understand it, your Honor.

I would list as the first consideration a customer has in her mind when she shops is convenience of location. And to that I would add then easy ingress and egress from the parking lot, so that it is relatively easy for a women to get to the store.

The next consideration I would list would be general over-all appearance of the market, cleanliness, neatness and well-displayed merchandise, friendliness of clerks, kinds of product sold, prices, advertising specials. And that would sort of be the order in which I would list them.

By Mr. Alsup:

Q. Where would you rate prices in that?

[fol. 2024] A. During times such as we are having now I would rate prices way down the list. Prices actually are not too much of a consideration during times—during good times. It is during depression times when price becomes very important. But such as we are having now, it is the other considerations of convenience, of service, merchandise, quality and so forth to which I give greater importance.

Q. Now, Mr. Von der Ahe, do you, can you describe for us what you consider to be normal draw area of a particular store?

A. If I were to attempt to say there is a normal draw area, I would mislead you, because I do not believe there is such a thing.

Each store must be considered by itself. And its position or location in the area which it attempts to serve.

Such as I have already illustrated, we have a store at Third and Kenmore, and five or six blocks away we have a store at Eighth and Irola, which are serving two different and distinct communities. Our draw area is limited to the population immediately around these two stores.

Other stores might have draw areas of a mile to a mile and a half or two miles, depending upon the degree or the intensity of their competition, and whether the store [fol. 2025] is able to draw customers past other stores.

So I would say there is no yardstick, or no formula. And I disagree vigorously with the government witnesses, when one man tells me he has a draw area of four miles, I don't believe him because we know we have a store in that area and our draw area is about one mile.

And another witness tells me—or tells the court that his draw area is three and a half miles and he competes with us in Eagle Rock. I disagree with him because I know he is not telling the truth. It is only what he thinks, and he cannot prove it.

But draw areas as such is only what is convenient to an area and is easy, as I say, governed by many other considerations.

Q. Mr. Von der Ahe, I ask you to look at Government's Exhibit 66, which is entitled Survey of Shopping Bag by Division Heads—a Von's survey.

A. Yes, sir.

Q. Is that exhibit in your handwriting?

A. Yes, sir.

Q. When did you prepare it?

A. This exhibit is dated December 19, 1959.

Q. Turning over the first page, Mr. Von der Ahe, there is a reference to J. Ball. Would you identify him?

A. Mr. James Ball is the treasurer of Von's Grocery [fol. 2026] Company.

Q. And had you assigned him to work at Shopping Bag to make a study of their operations?

A. Yes, I did.

Q. When?

A. At the time we were negotiating our merger we instructed Mr. Ball, with Mr. Hayden's approval, to go over to the Shopping Bag offices and begin to make an internal

audit of the company. And he did so. And I believe he went there about September of 1959.

Q. At page 1 states:

"Shopping Bag hidden jewel.

"Von's can improve Shopping Bag operation.

"1. Lack of management-direction.

"2. Too much cross purposes.

"3. Figures are not utilized.

"No daily sales.

"No good cash handling.

"Gross—they don't have."

And then you pointed out:

"Shopping Bag has finest equipment and facilities, good people, could do a good job if let alone and guided—"

That is a little confusing to me, I might say——

"Conclusion—continue to negotiate."

[fol. 2027] Is that what Mr. Ball reported to you at that time?

A. Yes, sir.

Q. And would you identify Mr. Bolstead, who is the next one referred to.

A. Mr. Norman H. Bolstead is the manager of our operations.

Q. And the notes which thereafter appear on that page and the next page are what Mr. Bolstead reported to you?

A. They are, yes, sir.

Q. And would you identify Mr. Ward?

A. Mr. Ward was our sales and promotion manager. And he is now the executive vice president of Food Giant Markets.

Q. On page 3 there is a notation, Mr. Von der Ahe, under the name Ward:

"No one wants to make a decision. Office dictates display and merchandising. No 'esprit de corps' at store level——"

Is that what Mr. Ward reported to you?

A. It is.

Q. Would you identify—and I won't ask you the details—but I will go through the rest of these—who Mr. Hardesty is, who is referred to there.

A. Mr. Jack Hardesty is the division head of our [fol. 2028] grocery department.

Q. And the comment which appears on that exhibit under his name are what Mr. Hardesty reported to you?

A. They are.

Q. And on the next page, there is a man listed as K. Olsen. Would you identify him, please?

A. Mr. Kenneth Olsen is the division head of our meat department.

Q. Of Von's?

A. Of our present company, Von's Grocery Company.

Q. What was he at the time?

A. The same.

Q. And the next page, there appears the name J. Osberg, could you identify him?

A. He was the division head of Von's produce department.

Q. Of Von's?

A. Fruit and vegetable department of Von's Grocery Company.

Q. And what is he now?

A. Mr. Osberg is deceased.

Q. I am sorry. Then the next page refers to Ed H. Would you identify him?

A. This is Mr. Edward Hirschman, division head of the delicatessen department.

[fol. 2029] Q. And the next page refers to P. Marshall, would you identify him?

A. Paul Marshall was the advertising manager of Von's Grocery Company.

Q. And would you identify Mr. K. Doyle, who appears on the next page.

A. Mr. K. Doyle is the manager in charge of personnel of Von's Grocery Company.

Q. And who is Don Bushmayer, who is referred to on the next page?

A. Don Bushmayer is the manager of warehousing and distribution for Von's Grocery Company.

Q. Mr. Von der Ahe, did you form any opinion at that time as to Shopping Bag as an organization?

A. I did, sir.

Q. And would you state what it was?

A. Based on my own observations and from the reports of our division heads, we concluded that Shopping Bag was a very fine organization, in that it had completely modern facilities and offices and warehousing distribution, it had new and modern stores, that it was lacking in a full complement of top management. And we felt that it was not realizing the full profits out of its sales, and that we could move in and improve the picture.

Q. Can you tell us whether or not you have improved [fol. 2030] the picture with respect to Shopping Bag stores?

A. I believe we have. Results have shown that we have included the Shopping Bag volume with the Von's volume and arrived at a net profit as a percentage of sales which is comparable to what Von's was enjoying before the merger.

The Court: Let's see, the last year, in 1960—was it 1960 that was 9/10ths of a per cent net sales, wasn't it, on Shopping Bag?

The Witness: I believe that was 1959.

The Court: 1959, was it—

The Witness: Just before the merger.

The Court: All right. Let's take '59—I believe that is right, 9/10ths of a per cent.

The Witness: Yes.

The Court: What was it in '62, do you know?

The Witness: In '62 it was combined, all as one company now. And it was over 2 per cent, your Honor.

The Court: Well, what I was trying to—have you any way of knowing, of course that averages for both companies—

The Witness: We have not operated the companies separately. We just don't know what each group of stores would have developed.

The Court: How about the volume, you have the volume [fol. 2031] on the stores, of course, don't you?

The Witness: Yes, we have.

The Court: What has happened to the volume on the Shopping Bag stores as contrasted to 1959, the volume of sales?

The Witness: Would you accept 1962 figures as against 1960?

The Court: Yes, that is all right.

The Witness: The volume in the Shopping Bag stores on a store-by-store basis in 1962 was eight million dollars over—correct me—it was six million dollars more than the same stores did in 1960.

The Court: Percentagewise what does that amount to?

The Witness: It would have been in the neighborhood of 10 per cent.

By Mr. Alsup:

Q. In that same time, Mr. Von der Ahe, can you tell us what has happened to the sales of the Von's stores?

A. During the same period, in 1962 the Von's stores increased their sales only two million dollars over 1960 on a store-by-store basis.

The Court: And percentagewise?

The Witness: Percentagewise it would have been about 2½ per cent, or so.

[fol. 2032] By Mr. Alsup:

Q. To what do you attribute the better performance of Shopping Bag stores after the merger, as compared to the lesser improvement in the Von's stores?

A. Well, I believe it bears out the prediction of our division heads when they analyzed the Shopping Bag organization, that they were not getting the full potential out of their operation, either in sales nor in gross profits. And this is what I think accounts for the fact that the Shopping Bag stores showed a better increase than the Von's stores during that same comparable period.

The Court: In brief you are saying management, is that right?

The Witness: Yes, your Honor.

By Mr. Alsup:

Q. Now, Mr. Von der Ahe, in your affidavit you comment upon the affidavit of Dr. Mueller of the Federal Trade Commission, the economist for the Federal Trade Commission, who lists a number of acquisitions made by others in the period of 1949 to 1958; and you point out that these same companies have sold stores. Dr. Mueller's affidavit—may I borrow the court's copy?

The Court: Yes, certainly.

Mr. Alsup: I seem to have misplaced mine.

The Court: Is it in one affidavit or is it mixed in with [fol. 2033] others, counsel?

Mr. Vaughn: In your book, your Honor, it is bound—

Mr. Coyle: It is bound, your Honor, in the book.

The Court: Oh, I see. It is a Government's exhibit, you mean?

Mr. Coyle: Yes, we put the affidavit in front of each—

The Court: Pass it to me, Mr. Clerk.

The Clerk: Which one is it in?

Mr. Coyle: I will give you my copy.

Mr. Alsup: If I could just borrow counsel's copy—

The Court: You can borrow mine, if you like.

Mr. Alsup: There is one right here, your Honor. Thank you.

The Court: All right.

By Mr. Alsup:

Q. Dr. Mueller's affidavit, Mr. Von der Ahe, he states on page 3, commencing at line 27:

" * * * Plaintiff's Exhibit No. 6 shows that the market share of the top 20 chains in the Los Angeles metropolitan area increased from 43.8 per cent in 1948 to 56.9 per cent in 1958.

"The market share of the top 20 in 1958 would drop to 47.3 per cent if the sales of the top 20 were re-[fol. 2034] duced by \$192,916.00 i.e., by the 1958 sales of stores acquired by the 15 chains covered by our survey * * * "

Mr. Von der Ahe, have you made any study of the increase in market shares between 1948 and 1958 of the concerns now listed in the top 20 in Government's Exhibit 1 which made no acquisitions?

A. I have made some computations on those stores which made no acquisitions, which were such as Alexander's Markets, and Fox Markets, Market Basket, Von's Shopping Bag, Greater All American.

And in 1948 their market shares totaled approximately 7 per cent.

And in 1958 that same group of companies accounted for approximately 18 per cent.

The Court: You mean by shares their share of the market?

The Witness: Their share of the market, your Honor, yes.

The Court: Yes. I suppose another way of putting it would be percentage of sales.

The Witness: To the total.

The Court: As to the total.

The Witness: Yes, sir.

[fol. 2035] By Mr. Alsup:

Q. You referred to All American, did you refer to Hughes Market?

A. Hughes was not in business in 1948. But it—it was included in that 18 per cent approximate figure I gave you.

[fol. 2036] Q. And how about Shoppers Market?

A. The same thing is true of Shoppers. They had no market share in 1948 whereas they had almost 1 per cent of the market share in 1958.

Q. How about McCoy's?

A. McCoy's, likewise, was not in business in 1948. Its market share was slightly less than 1 per cent in 1958.

Q. In that same period 1948 to 1958, or to the present time, Mr. Von der Ahe, do you know what has happened to the market share of the leader, Safeway?

A. I believe that the market share of Safeway has declined.

Q. In your affidavit, Mr. Von der Ahe, and I believe also in the affidavit of Roger Laverty of Thriftmart, the state-

ment is made that you believe that you could start out all over as a single store operator today and do better for yourself financially than you do as president of Von's Grocery Company. Would you state what you meant by that?

A. I believe that every operator of a chain store will admit—I know Mr. Lavery admits it, I admit it—that my compensation or his compensation, or the compensation to any president of any chain store in this area right now would not be equal to what he himself could earn for himself by operating a single market. In other words, it would be more profitable for that individual to operate a [fol. 2037] single independent store than it would be as compared to his compensation as president of the company.

The Court: You are not including any stock holdings; you mean just compensation in salary?

The Witness: That's what I mean, your Honor, yes. In other words, if I can't earn more operating a store than I do as president of the company, I don't know very much about the business.

Mr. Alsup: Speaking of salary—

The Court: I guess the time will come when your salary will be specifically limited, we are on the road to that now, Mr. Witness, so maybe you had better get your independent store started. The revenue provisions will soon be that we have to report every morning what we earned the previous day.

If that's what the people want, I guess that's what they will get.

Mr. Alsup: I hope they don't want it, your Honor.

Q. Speaking of salaries, Mr. Von der Ahe, can you give us some idea of the range of salary—for example, what does a store manager working for Von's make?

A. A store manager makes from \$10,500 to \$12,000 a year.

Q. And how about your supervisors?

[fol. 2038] A. Our range of supervisors I believe is from about \$14,000 to \$18,000 a year.

Q. How about division heads?

A. Division heads, they are in the range of from \$20,000 to \$30,000 a year.

Q. Mr. Von der Ahe, this merger took place a little

more than three years ago; have you seen any lessening of competition in the retail grocery business in this area since that time?

A. Absolutely not. I see an increase in competition in this area, it is continuing to increase.

Q. What is the basis for that statement?

A. Competition is becoming more vigorous, there are more firms engaged in the business, there are stronger smaller firms continually taking a larger part of the market share, at the same time the larger firms are continuing to expand. We have these very aggressive independents who are opening one store, they become a chain when they get two stores. But there are just more people participating and actively engaging in the retail food business in this area, and that is what is causing the increase in competition.

The Court: May I ask a question before you go on?

Mr. Alsop: Yes, your Honor.

[fol. 2039] The Court: What would be the effect of a 10 per cent drop in volume on your profits, could you tell me? Do you have any way of estimating?

The Witness: Your Honor, I could not give you a fast answer, because a lot of pencil work would be required, because I don't know how fast we could readjust our expenses and things of that nature, but a 10 per cent drop in sales, which would result in a 10 per cent or more drop in grosses, might not be measured with commensurate decrease in expenses, so I think it would be quite serious.

The Court: It would put you in the red, wouldn't it?

The Witness: I guess right now it would at least get us borderline.

The Court: You have certain expenses that can't be changed, your rent, and you can't just take employees and put them on one day and off the next?

The Witness: That's right.

The Court: And I take it with a sudden drop in the market—by the "market" I mean the consumer market—of 10 per cent, that you would have to wait and analyze, and you don't just precipitously start firing people and letting people go, and you might cut down on your purchases, I take it—is that right?

The Witness: Yes, but that would not result in a

[fol. 2040] lower cost of doing business. We have fixed expenses.

The Court: You have fixed expenses?

The Witness: Yes. Which we might be able to decrease some of them, but others we could not decrease.

The Court: Do you have any idea, for example, what margin Ralph's works on, net to sales?

The Witness: Ralph's is one company, and a very good company, I might say, good, honest, fair competition, that do not publish any reports of any kind. I know nothing about their business.

The Court: How about Safeway?

The Witness: Safeway's net to sales, from their published reports, is in the neighborhood of $1\frac{1}{2}$ per cent.

The Court: Well, that's about in keeping with the trade, isn't it?

The Witness: That's a good record, yes.

Mr. Alsup: I have just one or two more questions, if I may.

Q. You have mentioned new concerns entering the market in the last three years, Mr. Von der Ahe. Have you seen any changes in the forms of retailing groceries and related products?

A. Foodstuffs are now being sold in quite a few discount houses on a loss-leader basis to attract trade to the discount house. Recently over the past few years we have [fol. 2041] seen the introduction of milk depots, as they are called, which are permitted by the State to sell milk at lower retail prices than grocery stores. We have seen some convenience stores, such as Speedy Marts that were mentioned here yesterday. We see some foodstuffs even being sold in drug stores. So there is just almost no restriction on who may engage in the sale of foodstuffs.

Q. I understand the drug stores complain about the grocery stores selling health and beauty items, too?

A. It probably cuts both ways.

Q. Based on your experience——

The Court: We probably are going back to the old-time general store, aren't we, everything from patent medicine to dry goods?

The Witness: Your Honor, I agree with you, I think we are.

The Court: Just on a larger scale?

The Witness: That's right.

The Court: Isn't that about what is happening?

The Witness: Yes. Instead of buggy whips, we have spark plugs now.

By Mr. Alsup:

Q. Mr Von der Ahe, based on your knowledge of the industry, your own experience, and what you expect for the future, can you tell us whether in your opinion there [fol. 2042] is any danger whatsoever of a monopoly, or oligopoly, whatever that means, of grocery business in this area occurring in the future?

Mr. Coyle: If your Honor please, this is the ultimate issue.

The Court: And I will decide it, too. What he says isn't going to make the decision. I will let him answer.

Mr. Alsup: Every single government witness made a decision.

The Court: I will still decide it. The Supreme Court might change it, but I will decide it.

The Witness: My answer is that there is absolutely no possibility of concentration of retail food business in a few hands in this area. I would say it is more to the contrary. All the trends and indications are an increase in competition.

I can remember back to 1930 when the food industry in this area was in comparatively few hands. I can trace the steps right down to today that indicates and shows that there are more people getting into the business, more companies engaged in the business, and all signs point to the fact that this is an increasing competitive area.

The Court: What happened to Piggly-Wiggly, are they still here?

[fol. 2043] The Witness: Your Honor, the first Piggly-Wiggly, which was operated by Mr. A. C. Jones, Sr., sold out to Safeway.

The Court: There is a new Piggly-Wiggly now?

The Witness: This new Piggly-Wiggly was started a

few years ago by the same Mr. A. C. Jones, Sr., who has since died, and it is being operated by his son, A. C. Jones, Jr., and they have half a dozen or so stores, principally in the San Fernando Valley.

The Court: Incidentally, in England, in London, they have a grocery store which is about 250 years old where they wear tails, the clerks wear tails. Maybe you ought to try that out.

We will take our recess.

Mr. Alsup: Your Honor, I was just about to say that I have one more question for Mr. Von der Ahe.

The Court: If I give you until 2:00 o'clock, it will probably be three, so we will take a recess until 2:00 o'clock, counsel.

Mr. Alsup: Yes, your Honor. Thank you.

(Whereupon, an adjournment was taken to 2:00 o'clock, p. m.)

[fol. 2044] LOS ANGELES, CALIFORNIA, THURSDAY, JUNE 13, 1963. 2:00 P.M.

The Court: Proceed, counsel.

THEODORE A. VON DER AHE, called as a witness on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination. (Continued)

By Mr. Alsup:

Q. Mr. Von der Ahe, do you have any opinion as to whether Von's share of the grocery sales market in this area has increased or decreased in the years since 1960?

A. Yes, I have.

Q. What is that opinion, sir?

A. My opinion is that the Von's grocery share of the market in this area has declined since 1960.

Q. What is the basis for that opinion?

A. My opinion is based on the fact that this market

is expanding very rapidly. It is growing at a much faster rate than we are able to keep up with, because of new firms, companies, and individuals who are participating in this market, and which is taking a greater percentage of it, and the result is that the share of Von's Grocery Company has actually decreased.

[fol. 2045] Q. In the years since 1960 have you constructed any new stores outside of the Los Angeles-Orange County areas?

A. Yes, we have.

Q. What stores are they?

A. We have—

Mr. Coyle: Object, your Honor, this is outside of the relevant market.

The Court: There are a lot of things outside.

What is the purpose, counsel? Just because it is outside, does it make it relevant? What is the purpose?

Mr. Alsup: The purpose is simply to show, your Honor, that this area is decreasing so far as Von's is concerned, and they are moving in to other counties.

The Court: Well, I will permit it for that purpose. I will permit it.

The Witness: We have opened stores in Ventura County, San Diego County, and we are presently constructing a store in Riverside County.

[fol. 2046] The Court: Is that for the purpose of ultimately leaving Los Angeles County and environs?

The Witness: No, your Honor. It is trying to keep up with the population that comes into Southern California.

The Court: In other words, the population is spreading towards Ventura, it is spreading towards San Diego, and I suspect towards Riverside, so you are moving in those directions; is that right?

The Witness: That's correct, sir.

Mr. Alsup: No further questions.

The Court: All right. Cross examine.

Mr. Coyle: Yes, your Honor.

Cross-examination.

By Mr. Coyle:

Q. Mr. Von der Ahe, you testified that you had inspected most of the government witnesses' stores. Did you inspect the store in which Kenneth Richey works?

A. Kenneth Richey?

Q. Yes.

A. I do not recall the name. Would you mind giving me the name of the market in which he works?

Mr. Alsup: Covina Farms Market, Mr. Coyle.

Mr. Coyle: Covina Farms Market.

[fol. 2047] The Witness: No, I did not go in that store.

By Mr. Coyle:

Q. Did you inspect the stores of Paul Palmer?

A. I inspected one of his stores in Montrose.

Q. What was your opinion of that store?

A. I thought he had a very good operation.

Q. How large was it?

A. The store was of medium size, I would guess in the neighborhood of ten to twelve thousand feet. It was well merchandised, he had a good ad, and it impressed me as being a very sound operation.

Q. Did you inspect the store of Don Henry Fairbank, I think it is called Don's Market?

A. Yes, I did.

Q. What was your evaluation of that store?

A. Mr. Fairbank runs a rather small, what we would call a drive-in type of market. The store was neat and clean. He has a service meat department, which seems to be his main drawing card. I found nothing to complain about with the store. It was a good, well-run, independent operation.

Q. Did you inspect the stores of Manuel Gertmenian?

A. Yes, I did.

Q. What was your opinion of those stores?

A. The Gertmenian store on Atlantic Boulevard was, if [fol. 2048] I may use the expression, sort of hodge-podgery; it did not have a very inviting appearance, the fixtures

were antiquated, old, obsolete; the store was not very well merchandised, and it didn't have the appearance of being a good operation.

Q. What about his other stores?

A. I did not see any of his other stores.

Q. Did you inspect the store of Jack Levitan?

A. Yes, I did.

Q. What was your opinion of that store?

A. This store was on Valley Boulevard, east of Rosemead, and one day I entered the store—I was there on two different occasions—on this one particular day the entrance to the store was restricted to four feet of clearance, another very definite fire hazard. You go through—you enter into the store, you are exposed to a liquor department on one side, which was junky, and two cash registers on the other side, which had not been cleaned up, inasmuch as the empty bottles, cartons, and so forth, had not been removed, and it gave a disorderly, uninviting appearance. The market was very poorly lit, and the produce operation was very bad.

Q. How large a store was it?

A. It is a very small store, I would guess that it is about 40 feet wide by about 100 or so feet deep. And then [fol. 2049] adjacent to it in a small building of about 15 by 20 or so, he had his produce department.

Q. Did you inspect the store of Roderick Irvine?

A. Rod Irvine, those were the Star Markets you are talking about?

Q. Yes.

A. Yes, sir.

Q. Are they good stores?

A. In my opinion, they are not.

Q. Are they well kept?

A. I did not think so.

Q. How large are they?

A. They are both quite small, the number of square feet I cannot give you, but they were not comparable to some of the other stores I saw. The stores gave a neat appearance, but there was just something about them that gave the impression that they were not well merchandised. His fixtures were not well aligned. He caused a congestion in his store traffic. His meats were of the service type and

looked to be good, and it looked as though he had a good display of produce. But the store itself did not have what you would call a sharp or fresh appearance.

[fol. 2050] Q. Mr. Von der Ahe, I believe you testified you had been in the grocery business on a full-time basis for 37 years. Were you associated with Von's grocery chain of 87 stores?

A. Yes, I was.

Q. And what was your capacity with that chain?

A. I was manager of the warehouse.

Q. And that chain was sold to MacMarrs in 1928, was it?

A. In '28, effective as of January 1, 1929.

Q. And MacMarrs was born through the consolidation of several chains including Von's?

A. That is correct.

Q. And you and your father both stayed on with MacMarrs?

A. I stayed on for a while, until I think around 1930. My father stayed on a little longer.

Q. And then you opened your own store in 1932, is that correct?

A. That is correct.

Q. Was this a corporation, or did you open it yourself?

A. This was a partnership.

Q. Who were the partners?

A. My father and my brother and myself.

[fol. 2051] Q. What was this store called?

A. This was called Von's Store.

Q. And when you opened this this store, you opened it as part of an existing store, did you?

A. I might want to correct what I just said, that it was called Von's Store. Actually I believe it was called Messick's Market. And we opened up the grocery concession in Messick's Market.

And then after the earthquake we called it Von's Lynwood Market.

The Court: I will see how good your memory is. What was the date of the earthquake?

The Witness: It was in March of 1933.

The Court: Well, it was March 10th at a quarter to 6:00, March 10, 1933. That is the date.

The Witness: Your Honor, the only thing I remember is it was on a Friday afternoon.

By Mr. Coyle:

Q. And in 1949, I think you testified that you opened your warehouse, is that correct?

A. That's right. At the time we left Certified Grocers we opened a warehouse, yes. Prior to that time we had had a storage area which we did not operate as a warehouse. But it was for storage, excess storage.

Q. And was one of your reasons in opening your warehouse [fol. 2052] house and leaving Certified, because you found that in cases where there was a forthcoming price advance, Certified was not able to give you enough merchandise to afford you the same protection that the direct buying would afford?

A. Yes.

Q. And was another reason you found that the same thing happened in cases where prices declined, you had no floor-stock protection, whereas firms doing direct buying had such protection.

A. That's right.

Q. And did you also leave Certified and start doing your own warehousing because you found that when you required larger quantities of merchandise to cover an ad, you found that in many cases Certified did not have ample supplies to service you?

A. That is right.

Q. Now, do you have a meat buyer who buys your meat for you?

A. Yes, sir.

Q. Does he inspect the meat before he buys it?

A. He does as good a job as he can in selecting meat—

The Court: Just answer the question first "Yes" or "No," and then explain. Can you explain it "Yes" or "No"?

The Witness: Your Honor, it is a difficult question to answer "Yes" because he does look at the carcasses, [fol. 2053] but he does not have the time to inspect them.

The Court: All right. You have answered. Now, if you wish to explain, go ahead.

The Witness: The meat buyer is confronted with the job of buying hundreds of carcasses every week. And it is impossible for him to personally inspect every carcass that he buys.

So he looks at a row of sides hanging and stamps them all, unless there is something that, of course, appears too bad to be accepted. But he does not personally inspect every carcass he buys.

By Mr. Coyle:

Q. But he stamps every carcass.

A. He stamps every carcass.

Q. He must look at it before he stamps it.

A. That's right.

Q. How would an independent inspect, other than looking at the carcass?

A. Well, Mr. Coyle, there is a great difference between stamping a carcass and inspecting it. When he stamps a carcass he merely looks at the outside and goes on. And if he sees a whole row that looks pretty good he stamps them all and keeps going.

Whereas, an independent is able to look inside and outside, inspect it scrupulously to see, to determine the [fol. 2054] amount of fat, waste, and everything else in the carcass before he stamps it.

Q. That is, if he has time.

A. That is if he has time.

The Court: By the way, do you know whether or not you can tell whether they are corn-fed or not corn-fed by looking at them?

The Witness: Your Honor, I am not enough of a meat man to answer that question. But I think these meat men can.

By Mr. Coyle:

Q. You think your buyer can?

A. I think he can.

Q. Well, you have produce buyers, don't you?

A. Yes, we do.

Q. Do they inspect the merchandise before they buy it?

A. They inspect some of it, because it is impossible,

obviously, to inspect 500 crates of strawberries, let's say, or any large lot of anything. They look at what is presented by topping, noticing the lot, they see what it looks like, the shipper, the case. But it is subject to inspection when it arrives at our dock.

Q. And then you can return if it doesn't meet certain standards.

A. If it isn't as it looked like, we do return it.

The produce business, you must remember, is famous [fol. 2055] for having the big strawberries on top. And these commission merchants also sell their produce the same way. The nice produce is on top.

It is when we inspect through the entire lot that we discover things.

Q. If you are a big buyer it is easier to get produce returned than if you are a small buyer?

A. Not necessarily. The small buyer sees what he is buying at the time he buys it.

Q. He sees the strawberries on top, does he?

A. But he also takes delivery at the same time. That is the difference in our case.

Q. He discovers when he gets the merchandise back to his warehouse—

A. The small buyer doesn't take his merchandise to his warehouse. He takes it directly to his store.

Q. When he takes it to the store and opens the crate, can he return it?

A. Certainly he can.

Q. Now, in 1957 did you negotiate with Kroger with respect to the possible acquisition of your firm by Kroger's?

A. Yes, sir.

Q. And was Kroger also interested in Alexander and Shopping Bag?

A. Yes, sir.

[fol. 2056] Q. And subsequent to the negotiations with Kroger, when they broke off, did you approach Alexander and try to interest Alexander in entering into a merger agreement with you?

A. We had one feeler discussion, but that was the end of the discussion.

The Court: What is the relevancy? Suppose they did,

suppose they talked to the greatest chain in all the world about doing something, and didn't do it, what is the relevancy, counsel?

Mr. Coyle: I want to show that Von's Grocery Company initiated the merger talks with Shopping Bag and was interested at that time in making an acquisition——

The Court: Well, suppose they were. I don't think there is any question—is there any denial in the evidence about that?

Mr. Alsup: No such——

The Court: Well, is there any question about it, that Von's were the ones who instigated it, or didn't they, what is the——

Mr. Alsup: No question about it, your Honor, and their own exhibit shows it.

The Court: I thought the pretrial conference order indicated that they went out and bought Von's.

Mr. Coyle: Went out and bought Shopping Bag.

[fol. 2057] The Court: Voluntarily, nobody forced them into it, did they?

Mr. Coyle: No, Shopping Bag was——

[fol. 2058] The Court: What is the relevancy of that?

Mr. Coyle: To show Shopping Bag was not in such bad condition that they were out looking for somebody to take them over.

The Court: I see. All right. Go ahead. I will allow it.

Of course when you get into these economic cases, I suppose you get into all the facets of the whole civilization. We will be counting strawberries next, I suppose. I hope the Supreme Court has to do it and I don't.

By Mr. Coyle:

Q. Did you make the original contact with Shopping Bag with respect to the negotiation to merge?

A. Are you referring now to the Von's and Shopping Bag merger?

Q. Yes.

A. Or the Kroger?

Q. Von's and Shopping Bag.

A. I cannot recall circumstances or events, but to the best of my memory after we had seen this Kroger survey,

which you have a copy of, it was pointed out that there was no conflict or overlapping competition between Von's and Shopping Bag, and Mr. Hayden and I continued the discussion in view of the fact that this merger just made good economical sense.

[fol. 2059] Q. Mr. Hayden was not in on any discussions with Safeway, was he—Kroger, I mean?

A. Not that I know of.

Q. So after the Kroger negotiations broke down, then you approached Mr. Hayden and instituted the negotiations?

The Court: Counsel, you drop your voice at the end. We all have to lean forward on every sentence. Would you please keep your voice up?

Mr. Coyle: Yes, your Honor.

Q. Did you institute the negotiations with Shopping Bag?

A. I would say that I, at least, carried them on. Now, I don't remember if I said the first word or if Mr. Hayden said the first word, but we continued our discussions after the Kroger incident was ended.

Q. Was Mr. Hayden in on the discussions with Kroger?

A. I just answered by saying I don't think he was.

Q. I don't understand the statement that you continued the negotiations.

A. With Mr. Hayden and myself.

The Court: He said, in effect, counsel, that he wasn't sure, he didn't remember who started the first conversation, but he carried on the negotiations.

Mr. Coyle: I understand.

Q. During the years as this area has grown in population, [fol. 2060] has there been a movement on the part of the chains to follow the population?

The Court: To do what?

Mr. Coyle: To follow the population, and locate stores in the new areas as the population moves out.

Mr. Alsup: Your Honor, it is confusing and ambiguous.

The Court: I understand it, and I think the witness is able to understand it. He is capable of taking care of himself. I will let him answer it.

As a matter of fact, he might do a good job if he moved over in the Antitrust Department.

The Witness: Thank you, your Honor.

The Court: Go ahead and answer it.

The Witness: I believe it can be stated as a general rule that the chain stores, and other markets, the food industry, follow the population.

The Court: Well, let me ask a question.

Do you know of any business in the world that is engaged in selling either food or clothes that doesn't follow population?

The Witness: Not at all, your Honor.

The Court: It depends on population, doesn't it?

The Witness: Certainly.

The Court: It depends on mouths, food depends on [fol. 2061] mouths, the number of mouths, is that right?

The Witness: Yes.

By Mr. Coyle:

Q. Generally, when the population moves out into an area, do several chains move out into that area to serve the population?

A. I can't answer that yes or no. It depends on how much population moves out, how many mouths there are to feed, and whether the economics would justify one, two, or half a dozen stores, regardless of by whom they are operated.

Q. As the Downey area has grown, have a number of chains moved out into Downey?

A. I believe they have.

Q. As the Whittier area has grown, have a number of chains moved out into that area?

A. Yes.

Q. As the Garden Grove area has grown, have a number of chains moved out into Garden Grove?

A. Yes.

The Court: How about Beverly Hills, have they moved into Beverly Hills?

The Witness: Your Honor, that is a difficult area to open a store in because of the cost of land. It is almost impossible to open a store in Beverly Hills.

The Court: But Safeway has opened two in the last [fol. 2062] 10 years.

The Witness: Safeway has moved out there, yes.

The Court: Have you, Von's?

The Witness: Not yet, your Honor. I might add that we would very dearly like to have a store out there.

Mr. Coyle: I have some exhibits I would like to have marked, your Honor.

The Court: Mark them, Mr. Clerk, please.

While he is doing that, may I ask you one question?

What do you figure, insofar as your operation is concerned, the maximum amount that can be paid for land—for square foot, I guess you would figure it, wouldn't you?

The Witness: Yes. We have upgraded our ideas on how much we can pay for a store site, and it depends now whether we are going to be the landlord ourselves—

The Court: I understand that. Assuming you are not the landlord, assuming you are leasing, you are going to pay on the lease on a 25-year basis—don't they figure it on the square foot basis?

The Witness: They figure it on a square foot basis. I assume you are speaking about land cost now, not building cost?

The Court: Land cost first. We will come to building next.

[fol. 2063] The Witness: We do not like to pay in excess of two dollars and a half a square foot.

The Court: Two and a half a square foot means \$42,000—what is in an acre, 42,000?

The Witness: 43,000. About \$100,000.

The Court: About \$100,000?

The Witness: Yes.

The Court: Generally, what would be the square footage in one of your stores that you would anticipate?

The Witness: Well, on the basis we are talking about now, we are talking about two and a half acres to three acres.

The Court: So you would have a land cost of about \$250,000, is that right?

The Witness: That's correct, your Honor.

The Court: How many square feet do you usually figure in the building?

The Witness: We like to talk in figures of 24,000 square feet on the ground floor.

The Court: What is a rough estimate—you had better listen to this, gentlemen. You may wake up and find something in the record you don't like.

Mr. Alsup: I like it, your Honor. I was listening. I just wanted to get a copy of the exhibit.

The Court: On the basis of square footage, what is [fol. 2064] a rough estimate on building cost? Ten, twelve, fifteen?

The Witness: Our buildings are costing in the neighborhood of \$300,000 to \$350,000.

The Court: Well, that would be how much a square foot?

The Witness: Your Honor, I might explain. This 24,000 square feet on the ground floor also has in the neighborhood of 6,000 feet for a mezzanine, so by standards today we are talking about a 30,000 square foot market, which costs in the neighborhood of ten to eleven dollars per square foot.

The Court: All right. So there is an investment involved of about around \$600,000?

The Witness: That's correct.

The Court: Go ahead, counsel.

The Clerk: I have marked four maps as Plaintiffs' Exhibits 79, 80, 81, and 82.

(The exhibits referred to were marked Plaintiff's Exhibits 79, 80, 81, and 82.)

Mr. Coyle: If your Honor please, I would like to show these exhibits to the witness.

The Court: Certainly. Counsel, in this court you may approach the witness at any time. The only request I make is when you have finished showing him something, don't stand there unless you have to. If you want to approach the witness stand and point out something, I will [fol. 2065] be glad to have you do it.

May I ask one other question before you take up and it will save interrupting you again?

Mr. Von der Ahe, in the matter of financing, from your knowledge of the trade—I would like to have you hear this, counsel, because later on you are going to come back

and I am going to hear you say you didn't hear something, and it will be too late, so you had better listen.

Mr. Coyle: I am sorry.

The Court: These things may not seem relevant to you, but they are to me.

From your experience in the trade in acquiring sites for stores, is there any difficulty about an independent going out and acquiring a site, building a store?

The Witness: The answer is so far as I can recall there is no difficulty, an independent can go right ahead and acquire his site and build a store.

The Court: If he has the money you mean?

The Witness: If he is able to provide the funds.

The Court: How about the financing, does he have any more difficulty in getting the financing than a chain store, for example, a small or large chain?

The Witness: Well, your Honor, if the independent goes [fol. 2066] out and buys the land, builds his building, I am sure he is able to put a mortgage on it which will finance his investment.

This is contrary to what the chains do. They do not, as a general rule, buy land and put on buildings and borrow against it.

The Court: What I am getting at is, the financial community, mainly now I am talking about insurance companies, who do most of the lending—is that right?

The Witness: That's right.

The Court (Continuing): —do they prefer the larger concerns, or do they prefer the smaller concerns, as far as you know?

The Witness: Well, your Honor, I am afraid I misunderstood you. The insurance companies will finance the leases of the larger firms. Up until now——

The Court: They look at a balance sheet, don't they, before they do it?

The Witness: They look at the balance sheet and the credit rating of the lessee before they make their commitments.

The Court: Well, suppose I, tomorrow, wish to go into—I have one small store, and assuming I decided to go out and engage in the grocery business and become a chain and have two stores, and I wanted to have a store

that, say, cost four or five hundred thousand, is it difficult, [fol. 2067] the financing?

The Witness: I would say in the absence of any credit rating, it would be difficult for you, sir, to get a store which cost four or five hundred thousand dollars, because the financing institutions would not finance it for you.

The Court: Well, when you get ready to enter into a lease, make a firm deal, do you have to supply balance sheets?

The Witness: No, we do not.

The Court: Your credit rating is already——

The Witness: It has already been established.

The Court: All right, go ahead.

Mr. Coyle: I have a question along those lines.

Q. You mentioned this 7 per cent net-net-net rate that insurance companies give to certain firms. Now, do you have to have annual sales of 50 million dollars in order to qualify for that 7 per cent net-net-net?

A. I have never heard of that as a restriction. I wouldn't know.

Q. You don't know whether there is any restriction as to who qualifies for those terms?

A. No, I do not.

Q. Now, Mr. Von der Ahe, will you look at——

The Court: One other question before you leave [fol. 2068] it. These are all economic questions. When these builders usually build these markets, they get out of them usually as fast as they can, don't they?

The Witness: Do you mean developers, sir?

The Court: Yes.

The Witness: I do not think they do.

The Court: They get financed, don't they?

The Witness: I think they get financed and maintain an equity in the development.

The Court: All right. Go ahead.

By Mr. Coyle:

Q. Mr. Von der Ahe, will you look at the exhibit which shows the Von's and Shopping Bag locations in 1946?

A. Yes, sir.

Q. Does that indicate——

The Court: What is the exhibit number?

The Witness: No. 79.

Mr. Coyle: 79, your Honor.

The Court: All right.

By Mr. Coyle:

Q. Does Exhibit 79 show that the Von's Stores were primarily in the southwest part of the Los Angeles metropolitan area—I am sorry—the northeast section, and that the Shopping Bag Stores were in the southwest portion of the area?

[fol. 2069] A. No. it does not.

Q. What does it show?

A. Just the opposite of what you said, sir.

Q. I am sorry. It shows that the Shopping Bag Stores are in the northeast part of the area and the Von's Stores in the southwest?

A. That's correct.

Q. Then turning to Government's Exhibit 80 for identification, does this show the locations of the Von's and Shopping Bag Stores in the year 1950?

A. Without verifying the accuracy of this, I would say it shows them generally, yes, it does.

Q. Does it show that the Von's Stores are moving out of the southwest area and the Shopping Bag Stores are moving out of the northeast area?

A. I don't believe it does, sir.

Q. Turn to the next exhibit, then, Exhibit 81. Does Exhibit 81 show the location of the Von's and Shopping Bag Stores for the year 1955?

A. That is what this is purported to do. In the interest of time, I will accept it as being accurate, but I have not checked this or seen this exhibit before.

Q. The listing in the margin shows the addresses of the stores, doesn't it?

A. Yes, it does.

[fol. 2070] Q. Does it show that the Von's Stores are expanding to the north and to the east, or moving to the north and to the east, and the Shopping Bag Stores are moving to the South and to the west?

A. I believe this continues to show that the Von's Stores are still on the west and south portion of this metropolitan

shopping area and the Shopping Bag Stores are still on the north and east portion of the metropolitan shopping area.

[fol. 2071] By Mr. Coyle:

Q. All right. Then turn to Exhibit 82.

(The exhibit was placed before the witness.)

Q. Does Exhibit 82 show the location of the existing and planned stores of the Von's and Shopping Bag chains in the year 1960?

A. I would say within the same qualifications, that I have not checked the accuracy of this exhibit, nor the placement of the stars. But in general I assume that it does.

Q. Does this exhibit show that Shopping Bag has moved up into the Reseda area?

A. I see a red dot there which I assume is supposed to be for Shopping Bag stores—

Mr. Alsup: Will you give the address of that store, counsel? Is that the one at San Fernando-Mission Road?

Mr. Coyle: That may not be, it is the Reseda area.

The Court: I can't hear you, counsel.

Mr. Coyle: I am sorry.

Q. Does this exhibit show that Shopping Bag had moved up to 13730 Foothill in Sylmar, which is in the upper northwest part of the area?

A. Counsel, I will agree that Shopping Bag moved to [fol. 2072] that area. But I will point out to you that the placement of the dots on this map is inaccurate.

Q. Yes.

A. Yes, sir.

Q. Which dot are you referring to?

A. The same store you just mentioned.

Q. No. 34. And No. 42 is the—what store is that? Is that the one on the corner of San Fernando-Mission Road—

The Court: Now, wait. Is this 34—go ahead.

Mr. Coyle: 43.

Mr. Alsup: 42.

The Court: I am sorry, but I didn't get the number. 34?

Mr. Coyle: 43.

Mr. Alsop: 42.

Mr. Coyle: 42, I am sorry. I have a very small copy here, your Honor.

The Court: I want to remember it so when I see the exhibit I can identify it. 42, is it?

The Witness: What about 42?

By Mr. Coyle:

Q. Is 42 up in Reseda?

A. 42, according to your map here, sir, is at the corner of San Fernando-Mission Road and Balboa, which earlier [fol. 2073] this morning I testified was never opened as a Shopping Bag store.

Q. And that was planned to be opened in 1960, prior to the acquisition?

A. I so stated, yes, sir.

Q. And then this other Shopping Bag—let's leave the northwest area.

By 1960 did Shopping Bag and Von's have stores in Whittier?

A. Von's had a store in Whittier, East Whittier. Von's had one store in Whittier. Shopping Bag I believe had one store in Whittier.

Q. Did Shopping Bag have a store in Downey?

A. Yes, they did.

Q. Did Von's have a store in Downey?

A. Yes, they did.

Q. Did Shopping Bag have a store in West Covina?

A. Yes.

Q. Did Shopping Bag have a store in West Covina?

A. I just answered that.

Q. Did Von's have a store in West Covina?

A. Yes.

May I suggest that the dots on the map be made accurate, so it won't be so confusing.

The Court: We won't bother about it.

[fol. 2074] Mr. Coyle: I thought they were accurate, I am sorry.

The Court: The trend is what we are looking for. Counsel is trying to show the trend.

By Mr. Coyle:

Q. Now, did Shopping Bag have a store located at 1611 West Whittier, La Habra?

A. If that is at the corner of Hacienda Boulevard, yes.

Q. And did Von's have a store at 15704 Whitwood Lane in Whittier?

A. Yes, that is in East Whittier.

Q. And did the store manager of the Shopping Bag store in La Habra list Von's as his strongest competitor?

A. I don't know if he did or not. I don't remember.

The Court: What do you mean, list him as his strongest competitor?

By Mr. Coyle:

Q. In the report that was submitted to you to use in preparing the answer to Government's Interrogatory 6.

A. Mr. Coyle: I don't remember if he did or not.

Q. If he were shown on the interrogatory's answer, would he have listed—

Mr. Alsup: Your Honor, I object. The document speaks for itself.

[fol. 2075] The Court: Do you have it, counsel?

Mr. Coyle: This is the document which was introduced into evidence.

The Court: Well, read it, if you want to. It is in evidence. You can read anything you want from it.

Mr. Alsup: Your Honor, I don't believe that is in evidence. It was objected to yesterday.

Mr. Coyle: That is correct. That is why I am examining this witness.

The Court: What is the exhibit number?

Mr. Coyle: Just a moment, your Honor.

The Court: Well, when you refer to something I wish you would refer to exhibit numbers because we certainly want to aid the higher court in being able to know what we are talking about.

Mr. Coyle: Referring to Defendant's Exhibit AV, which was admitted in evidence yesterday, AV.

The Court: You can read it then, it is in evidence.

By Mr. Coyle:

Q. This Exhibit AV is an answer to Government's Interrogatory No. 6, which you, Mr. Von der Ahe, certified—or as to which you filed an affidavit in which you stated that:

“ * * * much of the information set forth in [fol. 2076] said answer was gathered and collated by persons regularly in the employ of said defendant or employed by attorneys of said defendant, and from records and files kept by said defendant in the regular and ordinary course of business, or from contact with officers and employees of said defendant, said persons acting throughout pursuant to the instructions of the affiant or defendant's attorneys with reference to the gathering or collation of such material * * * ”

Do you recall signing that certificate, Mr. Von der Ahe?

A. Are you referring to the study made by—I forget the man's name, who is a professor at Occidental University?

Q. I am referring to the answer to the interrogatory that was submitted.

A. I am sorry. My memory is blank on what I signed. But if you will show me whether it is this one particular instrument, I will be able to say “Yes” or “No,” whether I signed that or not.

Q. I wonder if the witness could be shown Exhibit AV.

The Court: Of course you can always show it to him.

(The exhibit was placed before the witness.)

[fol. 2077] The Witness: What page, please?

Mr. Coyle: I don't think the pages are numbered. No. 68.

The Witness: (Looks at exhibit.) Mr. Coyle, I am sorry but I don't find page 68 in here.

The Court: Go find it for him, counsel.

Mr. Coyle: It may be that certification is not attached to this exhibit, your Honor.

The Clerk: It isn't.

The Witness: This is what you just read to me.

Now, preceding this—

The Court: He asked you, though, did you yourself personally make those answers or who made them?

The Witness: Your Honor, that is what I am trying to determine.

The Court: I see. All right.

The Witness: I don't know what answer he is referring to now. And I asked the question if this was the work compiled by the professor from Occidental.

By Mr. Coyle:

Q. My question to you, Mr. Von der Ahe, is: Is that the material that you certified with this certification?

A. I don't know if it is or not. Let's get into this and see.

Mr. Alsop: Your Honor, I don't think there is any [fol. 2078] quarrel but what Mr. Von der Ahe signed the affidavit attached to the answer to the interrogatory, included among which Mr. Coyle is asking about.

The Court: All right. That settles that issue then, counsel.

The Witness: Okay.

The Court: I can understand how one might give a deposition or sign something in a case of this kind and might forget about it. In fact, some of you lawyers, as well as the judges, forget sometimes what paper is what. In fact, I am getting so many papers here I don't remember where I leave some of them.

By Mr. Coyle:

Q. All right. Referring to the page marked Exhibit E of Defendant's Exhibit AV—

A. Yes, sir.

Q. —does this page indicate that the Shopping Bag store manager at 1611 West Whittier, La Habra, listed Von's as his most important competitor? That is Von's No.—

The Court: Does it indicate that, counsel?

Mr. Coyle: It does to me, your Honor.

The Court: Well, if it does, read it to me.

Mr. Coyle: It says—

The Court: I am the one that is going to pass on the language.

[fol. 2079] Mr. Coyle: I am sorry, your Honor, it can't be read, it shows on the document—

Mr. Alsup: It shows on the face of the document, your Honor.

The Court: Well, show it to me and let me see it. I can determine that. Pass it to the clerk.

I am the one to pass on that.

Now, the question is whether or not this indicates—

Mr. Coyle: Whether or not this indicates—

The Court: It says names and addresses of competitors in order of importance, is that what you are talking about?

Mr. Coyle: That is correct, your Honor.

The Court: Now, it gives—who do you want to know?

Mr. Coyle: I want to know whether, as to that Shopping Bag No. 1, Von's No. 27 is listed as the most important competitor.

The Court: Is listed as No. 27?

Mr. Coyle: No, Store No. 27.

Mr. Alsup: Your Honor, it seems to me—

The Court: Now you have lost me completely.

Mr. Coyle: I am sorry, your Honor.

Mr. Alsup: I think we can stipulate, your Honor. The document speaks for itself.

[fol. 2080] The Court: Of course it does, but I am trying to find out what he is referring to.

Mr. Coyle: I am referring to the first Von's store listed there.

The Court: At 15704 Whitwood Lane.

Mr. Coyle: That is correct.

The Court: It lists it No. 1.

Mr. Coyle: As Shopping Bag's most important competitor.

The Court: It says names and addresses of competitors in order of importance.

Mr. Coyle: Yes, sir.

Now, turning to Shopping Bag No.—

The Witness: May I also suggest that you read the note at the bottom of this same page, which is purported to be the remarks of our manager.

The Court: All right. I will read it into the record.

"Note. A large Food Giant market located in a large shopping center approximately one mile south of Shopping Bag Store 1, No. 1, is scheduled to be opened at the end of July, 1960, and when it is opened the Food Giant market will replace Von's No. 27 as the major competition to Shopping Bag Store 1."

[fol. 2081] All right. Go ahead, counsel.

By Mr. Coyle:

Q. Now, turning to Shopping Bag No. 21, does this part of the exhibit show that the Shopping Bag 21 at 1183 Quadway, Whittier, listed as one of its competitors Von's No. 27, the same one we referred to about the 15740 Whittier Lane, as a competitor——

The Court: What are you reading from now?

Mr. Coyle: Shopping Bag No. 21, your Honor.

The Court: Where is Shopping Bag No. 21?

Mr. Coyle: We were on Shopping Bag No. 1, and then we turned the page——

The Court: I turned the page and it starts out 1, Piggly-Wiggly.

Mr. Coyle: I mean, up in the upper left-hand corner, your Honor.

Mr. Alsup: You have to turn 21 pages, I think, your Honor.

The Court: That is quite a difference, I would say. The next page is 21 pages, I see.

Von's No. 27, is that right?

Mr. Coyle: That is correct, your Honor.

The Court: Go ahead.

By Mr. Coyle:

Q. Then turning to Shopping Bag No. 27——

[fol. 2082] Mr. Alsup: I don't think there was an answer to the last question.

The Court: The answer is right here in the document. Names and addresses of competitors in order of importance. As I understand it, these are admissions, or these are answers given by the defense, is that correct?

Mr. Coyle: That is correct.

The Court: So there is nothing to prove, it is already proved for whatever it means.

Mr. Coyle: All right. I will ask the witness then——

The Court: You can call it to my attention, however. Why don't you just read it to me?

Mr. Coyle: All right. Then turning to Shopping Bag No. 27—Shopping Bag 27 shows that Von's No. 29 at 1000 East Valley, Alhambra, was the second most important competitor of Shopping Bag No. 27, and that Von's No. 4 at 2280 Atlantic Avenue was also a competitor——

The Court: Where do I find that, counsel?

Mr. Coyle: That is Shopping Bag 27.

The Court: Well——

Mr. Coyle: That is 6 pages over from page, from Shopping Bag 21.

The Court: All right. Go ahead.

Mr. Coyle: And then going on to Shopping Bag No. 28, that shows that Von's No. 31 at 973 South Glendora, [fol. 2083] West Covina, was a competitor of Shopping Bag No. 28 at 15427 Amar Road, La Puente. And the exhibit also shows——

The Court: Exhibit what?

Mr. Coyle: Exhibit AV, Defendant's Exhibit AV also shows——

The Court: Well, the trouble is, with the higher court trying to determine where to find this, counsel, I don't think they will ever in the world find these references, the way you are putting it in the record. I assume you would like to have the higher court know where to find it, wouldn't you?

Mr. Coyle: Yes, your Honor.

The Court: Well, I can't find it half the time, how are they going to? You are talking about AV and here is an exhibit E on page 2, and up on the left corner it says No. 27.

Mr. Coyle: Your Honor, this is Defendant's Exhibit AV and I think I am using the same terminology——

The Court: Well, you could state AV and what part of AV, couldn't you, counsel?

Mr. Coyle: All right, your Honor.

The Court: To help the record out.

Mr. Coyle: All right, your Honor.

In AV, Exhibit E——

The Court: Exhibit E in——

Mr. Coyle: In Defendant's AV, the page referring [fol. 2084] to Shopping Bag 28.

The Court: Can you find it, Mr. Witness?

The Witness: I have it, your Honor.

Mr. Coyle: That indicates that Shopping Bag No. 28 at 15427 Amar Road, La Puente, listed Von's 31 at 973 South Glendora, West Covina, as a competitor.

[fol. 2085] Then referring to Defendant's Exhibit AV, the part marked Exhibit E, the page referring to Shopping Bag 32, this page of the exhibit indicates that Shopping Bag No. 32 at 1170 West Garvey Boulevard, West Covina, listed Von's 31 at 973 South Glendora, West Covina, as its third strongest competitor.

The Court: Does it say the third strongest?

Mr. Coyle: It says "in order of importance."

The Court: Do you consider there is any difference in that from what you are saying?

Mr. Coyle: The third most important competitor.

The Court: It says, "Names and addresses of competitors in order of importance," then it is 3 or it is 4 or it is 5. Numerically they give them, is that right? Don't you think you ought to put it in that form?

Mr. Coyle: All right.

Does it list them numerically No. 3 in the list which lists "Addresses of competitors in order of importance"?

The Court: Well, it does, doesn't it?

Mr. Coyle: Sure.

The Court: Read it. He is not at the point now, unless he wants to say he made a mistake—these are whatever you want to call them, they are at least admissions, aren't they?

Mr. Coyle: Yes.

[fol. 2086] The Court: And they are binding on the defendants. You don't want him to change it, do you?

Mr. Coyle: No, your Honor.

Shopping Bag No. 33 in Defendant's Exhibit AV, the part marked E, shows that Shopping Bag 33 at 9922 Cotilla, Anaheim, listed Von's No. 26 at 12156 Brookhurst Avenue, Garden Grove, as a competitor, and showed that in order of importance it was marked No. 3.

And referring to the page showing Shopping Bag No. 35 in the portion of Defendant's Exhibit AV, which is marked Exhibit E, it shows that Shopping Bag No. 35 at 9058 East Firestone Boulevard, Downey, listed Von's No. 5 at 10001 Paramount Boulevard, as a competitor, and ranked it fourth in order of importance.

And all told——

Mr. Alsup: Counsel, don't you think it would be more accurate to say last in importance?

The Court: As I understand, this was an inquiry to determine from the defendant——

Mr. Coyle: That's correct, your Honor.

The Court: What the order of importance of competitors was, is that right?

Mr. Coyle: That's correct.

The Court: And he has listed them in that order, what he considers 1, 2, 3, and so on. And that is what you [fol. 2087] are now reading into the record?

Mr. Coyle: That's correct, your Honor.

The Court: It is his admission as to what he considers to be the order of importance of the competition. Is that right?

Mr. Coyle: That's correct, your Honor.

Mr. Alsup: I might say, your Honor, the exhibit is in evidence; all he is doing is reading portions of it in. It seems more appropriate for argument to me.

The Court: Well, counsel, this is an age-old problem in the trial of lawsuits, and I suppose there is nothing one can do about it, unless you want to do the same. What he thinks helps his case he reads into the record, so when he gets up on appeal and if the court reads it in the record and accepts it, then it is in his favor. But you can do the same thing, I guess.

Mr. Coyle: This witness also testified, though, there was very little competition between the two chains, and this exhibit shows that seven Shopping Bags were competing with six Von's stores in 1960, which was approximately 20 per cent of all the stores operated by both companies.

The Court: I think that is correct. The question is how much competition was there?

By this rating I am a little bit concerned as to how I arrive at how much competition there was. In other words,

[fol. 2088] seventh in importance may be of no consequence or it may be of great consequence. I was going to ask, perhaps, that would be of greater help to the court, and it concerns me. May I interrupt you at this point?

Mr. Coyle: Yes.

The Court: Taking Exhibit 82, Government's 82, with the stars and the red dots, I can't tell from this chart how far these stores are apart in miles, distance.

Mr. Coyle: The exhibit shows how far apart they are, Exhibit AV.

The Court: It does?

Mr. Coyle: Yes.

The Court: I understand that, but the eye can be misled. You have, for example—do you have a copy of 82 in front of you?

Mr. Coyle: No, I don't, your Honor, but I will get a copy.

The Court: Get it, will you, and let me ask you a question. For example, let's take an easy one. How far is it down between 33 and 26, what is the mileage between the red dot and the green star?

Mr. Coyle: I couldn't tell that from this exhibit, your Honor. But these exhibits were presented to show this movement that they were moving toward each other, and I certainly think they show that. They also—

[fol. 2089] The Court: I don't think there is any question that they show a movement, but the question, counsel, that comes up, and the one that seems to me to be rather relevant, is how far apart are these particular stores.

For example, I see a store here in the San Fernando Valley, 42 and 37, I guess it would be, I wonder how far apart they are. They could be five miles apart there.

Mr. Coyle: I think you would have to refer to Exhibit AV to determine that, if they are listed as competitors.

The Court: You know, the distance between 42nd Street and 48th Street is a pretty short jump; but when you go from Montana to Idaho you run into a little distance.

Mr. Coyle: We would have to have a large map to plot these things and show anything.

The Court: What I am getting at is how am I going to correlate the information on Exhibit 82, insofar as distances are concerned, between these Von's stores and the Shopping Bag stores?

Mr. Coyle: I didn't submit the exhibits to be correlated in that respect. I submitted the exhibits to show this movement, that one was moving from the southwest and the other from the northeast, and they got to a point where they both had stores in virtually every part of the Los Angeles metropolitan area, every sector of it, anyhow, they [fol. 2090] had stores, they both had stores in the northwest, they both had stores down in the southeast.

The Court: Well, this map, counsel, would create that impression, but one who has been all over this county must realize—what is the distance across this county, about 100 miles, Los Angeles County?

Mr. Coyle: I don't know.

The Court: Does anybody know? It would be 100 miles, wouldn't it, close to it?

Mr. Alsup: I am sure it would be at least that.

The Court: For example, from down at the Long Beach area up to, say, Hollywood, would be what—about 20, 25 miles?

Mr. Coyle: That's close to it, your Honor.

The Court: I notice there is one store, one Von's grocery store in 1960, down at Palos Verdes, and the next closest Von's store is—well, with the lighting in this courtroom I can't tell, it is impossible. It looks to me to be a distance of at least six miles, and that is up toward—

The Witness: Your Honor, if I might interject. It would be in Gardena.

The Court: It would be at least eight or ten miles, wouldn't it, eight miles, wouldn't it?

The Witness: Yes, it would be very close to that.

The Court: Then the thing I am coming to, counsel, [fol. 2091] is this: For example, you have here a store in—let me find the closest one that I can find and see what happens.

I suppose the closest I could find, at least by the way it is put on Exhibit 82, would be—well, I can't read the streets, I give up. This splendid lighting in this courtroom is such that I give up.

Go ahead.

What I am concerned about is the correlation in miles. I think it is of considerable importance.

Mr. Coyle: I think it is a practical problem. If you are going to submit a map that is going to have the store

location correlated in miles you would have to submit an awfully big map.

The Court: I don't think you can do it. That is the reason I say, other than what you are indicating just as a trend, general trend, these exhibits are of no value otherwise; is that right?

Mr. Coyle: That's right. Other than to show that they are moving towards each other.

The Court: Very well.

Mr. Alsup: Have those exhibits been offered, your Honor?

The Court: I don't think so.

Mr. Coyle: I offer them in evidence right now.

The Court: Any objection?

[fol. 2092] Mr. Alsup: No objection.

The Court: Admitted.

The Clerk: Plaintiff's Exhibits 79, 80, 81 and 82 in evidence.

(The exhibits referred to were received in evidence as Plaintiff's Exhibits 79, 80, 81 and 82.)

The Court: Go ahead.

By Mr. Coyle:

Q. Now, Mr. Von der Ahe, at the time of the acquisition had Shopping Bag made plans to put in a store at San Fernando on Mission Road and Balboa Avenue in Granada Hills?

A. Yes, sir.

Q. Was it determined not to put a store in at that location because that store would also have competed with a Von's store?

A. Yes, sir. I so testified this morning.

Q. Before the merger were you seeking new store locations for Shopping Bag—were you the corporate officer responsible for passing on new store locations?

A. Not for Shopping Bag.

Q. For Von's, I mean.

A. Yes, I was.

Q. Was Mr. Hayden doing the same thing for Shopping Bag?

A. Yes.

[fol. 2093] Q. And subsequent to the acquisition Mr. Hayden took over those duties for both firms?

A. That's right. That is one of his functions with the company.

Mr. Alsup: Not for both firms. Shopping Bag went out of existence.

The Court: I understand that, counsel. Those inadvertencies I usually catch.

He couldn't be obtaining them for Shopping Bag before he acquired Shopping Bag; I think that is pretty well settled, isn't it?

Mr. Alsup: That is for sure, your Honor.

[fol. 2094] By Mr. Coyle:

Q. Now, referring to opening of new stores, in opening a 27,000-square foot store, will it cost about \$225,000.00 to secure the fixtures?

A. That would be a fair estimate of cost for fixtures, yes, sir.

The Court: How much? \$225,000.00 for fixtures?

The Witness: \$225,000.00, yes.

By Mr. Coyle:

Q. And the inventory would be from \$125,000.00 to \$175,000.00?

A. That is approximately correct.

The Court: By the way, I take it these fixtures, they don't put those in on time, do they?

The Witness: They can be purchased on time, your Honor, yes.

By Mr. Coyle:

Q. Mr. Von der Ahe, your corporation doesn't put fixtures in on time because the financing costs are too high, isn't that correct?

A. We just prefer to pay for our fixtures as we buy them. We do not prefer to finance them.

Q. Yes. As you stated in your deposition on May 4, 1961, the terms on fixtures are too high?

A. That is correct.

[fol. 2095] Q. That is, the interest is too high?

A. That is right.

Q. And then the inventory is between one hundred twenty-five thousand and one hundred seventy-five thousand, and if you have to buy the land, would it be in the neighborhood of three-quarters of a million dollars to open a new store?

A. Mr. Coyle, may I take them one by one——

The Court: You are compounding it, counsel; what you are doing, you are confusing me, too, you have got land, fixtures, then you have the building. So you mean all of them, or part of them? I don't know what you mean.

Mr. Coyle: I have this question that was put to the witness on the deposition.

“Would it cost in the neighborhood of three-quarters of a million dollars to open a new store?”

“A. That would be a pretty good figure.

“Q. That would be a minimum figure?”

The Court: But the point, counsel, is this: To open a new store, that answer really gave you no information—it doesn't give me any.

Mr. Coyle: All right.

The Court: Because I don't know whether it means they bought it, whether they bought the ground, or whether [fol. 2096] they bought the ground and the building—they could have a 99-year lease on the building, they could have bought just the land or they could have bought the fixtures or they could have rented the fixtures—the equations are too many. You will have to clear it up for me. I don't understand.

By Mr. Coyle:

Q. Mr. Von der Ahe, will you——

The Court: Let me ask a question. How much would it cost to open what you would consider to be a store in keeping with your idea of a top Von's store? Now, assuming, 1, that you did not buy the land and you did not

buy the store building, but only the equipment. How much would it cost?

The Witness: In answer to that, your Honor, we would put in fixtures of approximately \$225,000.00 and our inventory would be between one hundred twenty-five and one hundred seventy-five thousand. So the rough figure is \$400,000.00 investment in fixtures, in equipment and in inventory.

The Court: Without owning the land or the building?

The Witness: That's right.

The Court: But if you bought the land and the building, that would add on how much?

The Witness: We would add on a building of [fol. 2097] approximately three hundred to three hundred fifty thousand dollars, plus the cost of the land.

The Court: And the land would probably run about \$250,000.00?

The Witness: That would depend—

The Court: As a general item.

The Witness: We have bought acreage recently for \$30,000.00 an acre. And we have also paid much higher prices for it. That is a variable—

The Court: Well, one is a pioneering situation and the other is in a locality that is established, is that right?

The Witness: That's right, yes, sir.

By Mr. Coyle:

Q. Now, when you open a new store, Mr. Von der Ahe, how long is it before you show a profit?

A. We generally figure from three to six months.

Q. You lose money from three to six months, is that correct?

A. I don't mean to infer that we lose money, sir. I mean we have opening costs that are not recaptured until three to six months. We are out-of-pocket cash, yes.

Q. You are out-of-pocket cash for the first three to six months?

A. That's right. It is like a farmer who sows seed. [fol. 2098] He has to wait until his crop matures before he reaps it.

Q. And during this period it is necessary to defray

payroll costs and other costs out of your cash fund, is that correct?

A. Certainly.

Q. And was Shopping Bag Stores comparable to your stores in the investment required?

A. I believe they were.

Q. And in 1958 did Shopping Bag open eight stores?

A. I do not know.

Q. If Shopping Bag opened eight stores in 1958, would they be showing an out-of-pocket cash loss for a period of three to six months on those stores?

A. Mr. Coyle, I was not too familiar with their operations and I don't know.

But based on our experience they should have shown some opening costs.

I believe that is true of any person, firm or company that opens a store, they have an initial outlay before the store becomes a profitable operation.

Q. Based on your experience, a firm opening eight stores would show a three to six months loss on eight stores during the year in which they were opened?

The Court: Counsel, I don't mean to interfere with your case, but these figures are all right for a mind who [fol. 2099] has no perception of accounting, or tax structure or those things. But the difference between capitalization and expense—you have got those problems, and you leave me in the dark. I don't know what is capitalized and what is not capitalized.

Mr. Coyle: Let me ask the witness that question, your Honor.

The Court: I don't know what is depreciation and what is not depreciation. There are so many items in there—you know, just opening up a store and saying, I am ready to sell—that doesn't answer the problem.

By Mr. Coyle:

Q. Are these costs for payroll and other items when the store is not showing a profit, do they come out of your cash fund?

The Court: May I ask a question this way: What do you

capitalize when you open a store? What is capitalized and what is expenses, in the general practice?

The Witness: We capitalize, let's say, our fixtures, and we expense a normal opening cost, which would be payroll, advertising, small equipment which is too small to capitalize, we write that off immediately.

The Court: Rent?

The Witness: Rent is written off immediately.

The Court: Are you on a cash basis or accrual [fol. 2100] basis?

The Witness: We are on a cash basis.

By Mr. Coyle:

Q. Would the openings of new stores by a chain lower the net income on gross sales, percentage net income on gross sales in the year during which the new stores were opened?

A. I don't think it should.

Q. Wouldn't those losses, and the burden of carrying this labor cost and these other costs for three to six months, wouldn't they be reflected in the percentage income?

A. I can only state so far as the Von's grocery chain is concerned. And they have never resulted in figures that were depressed on account of opening costs.

The Court: May I ask you this—you are on a calendar year basis, so your profit and losses are on that basis—have you ever had a store that had a loss for a full calendar year?

The Witness: Yes, we have some right now, your Honor. But they are not—

The Court: That in effect dilutes it to the extent that, for example, you have now or you did have when you merged?

The Witness: We had 28 stores at the time of the merger.

[fol. 2101] The Court: 28 stores, so one store went in the red and it diluted the other 27 to a ratio of 1 to 27, is that right?

The Witness: Not exactly.

The Court: I mean in theory.

The Witness: It would if they were all comparable.

Mr. Alsup: If your Honor please, I think he had started to say something else in response to this earlier question about what stores are now showing a loss. May I ask him——

The Court: Well, I didn't ask him that. I didn't ask him what stores, I asked him if any. You can get that later if you want to, counsel.

How many stores have shown a loss, to your recollection, in one calendar year, in any one calendar year?

The Witness: In our chain, your Honor?

The Court: Yes.

The Witness: We have, I would say, two or three that are marginal, and that is all.

By Mr. Coyle:

Q. You don't know whether or not the cost of opening new stores by Shopping Bag in the year 1958 contributed to the drop in the percentage of income earned, as a percentage of gross sales, do you?

A. No, I don't believe I have any knowledge of that.
[fol. 2102] Q. But they may have?

A. I have no knowledge at all. I will not speculate.

The Court: Well, I would like to ask one question and then we will take a recess.

Mr. Witness, have you had occasion to have a store start out within the first three months and make a profit?

The Witness: Yes, I have, your Honor.

The Court: And that was because of a heavy volume, was it?

The Witness. Because it started off as a good store immediately.

The Court: Because of volume?

The Witness: Because of volume, yes, sir.

The Court: I think, counsel, it is 3:20, perhaps we had better take—is ten minutes enough?

Mr. Alsup: Yes, your Honor.

The Court: Ten-minute recess.

(Short recess.)

[fol. 2103] The Court: Proceed.

By Mr. Coyle:

Q. Mr. Von der Ahe, was there a strike in 1959?

A. There was a strike for the first four weeks.

The Court: Against who? Was there a general strike all over the nation? Where?

By Mr. Coyle:

Q. Was there a strike in the retail grocery industry in the Los Angeles area in 1959?

A. For the first four weeks in January 1959 there was, yes.

Q. Were the stores of some of the major chains closed during this strike?

A. Yes.

Q. Were 21 out of—

A. I might say some of the stores of some of the major chains were closed; not all of them. I don't mean to imply that.

Q. Were 21 out of 27 of Von's stores closed, and 29 out of 36 Shopping Bag stores closed from January 2, 1959, through January 28, 1959?

A. The answer for the Von's stores is accurate. I don't recall exactly how many of the Shopping Bag stores were closed, but I think that's a close figure.

Q. I was reading from the proxy statement.

[fol. 2104] A. All right. I will accept it.

Q. The proxy statement goes on to say this event had an adverse effect on the sales and earnings of both companies for the current year.

Is that so? Did the strike have an adverse effect?

A. That would naturally follow.

Q. And would that lower the income of the firms expressed as a percentage against the sales?

A. I don't think that would follow. It should to a degree, but I think that the Von's chain, as such, showed a very comparable figure to preceding history.

Q. If you had eight newly-opened stores, would it affect them more than stores with an established clientele that had been operating for a number of years?

A. I don't see how it would.

Q. Prior to entering into the agreement to acquire Shop-

ping Bag, did you inspect the history of the company or study the history of the company?

A. I was familiar with their history, yes.

Q. From the beginning of 1955 to the beginning of 1960 did Shopping Bag increase the total number of stores in operation from 24 to 38?

A. I believe that's correct.

Q. And its total sales from \$55,000,000 to \$84,000,000? [fol. 2105] A. I believe so.

Q. In the period between 1957 to 1960, did Shopping Bag increase its retained earnings from 5.6 million to 6.2 million?

A. I don't remember, but I assume they did. It would follow.

Q. Do you know whether Shopping Bag's net dollar profits were at an all-time high in 1957 when you began your merger negotiations with them?

Mr. Alsop: I object, your Honor. There is no foundation laid as to that.

The Court: If he knows, he can answer it; if he doesn't know, he can't answer it.

Mr. Alsop: Counsel says "When you began your merger negotiations."

The Court: That is a point of time. He knows when he began. If he knows, he may answer.

Mr. Coyle: He testified about it.

The Witness: I think they were.

By Mr. Coyle:

Q. You think they were?

A. Yes.

The Court: The thing that worries me in these cases is the penalty of success. Every time you get successful, you [fol. 2106] have got to be penalized. This is what worries me in these cases, how you determine what is good success and what is bad success. That is what bothers me.

By Mr. Coyle:

Q. Mr. Von der Ahe, you mentioned Smart & Final and Spartan in the course of your testimony. Who is Smart & Final?

A. Smart & Final is a wholesale grocery house in this area that operate quite a few cash and carry wholesale outlets, plus operating a major warehouse.

Q. Is this an independent corporation?

A. I believe it is affiliated with Thriftmart.

Q. Was it acquired by Thriftmart over the past few years?

A. I can't give you the exact details of the transaction, because I do not know them, but I know that there is a connection between Smart & Final and Thriftmart.

The Court: Smart & Final was a wholesale house, weren't they?

The Witness: They still are, your Honor.

The Court: It doesn't distribute at the retail level, does it?

The Witness: No, it does not. At one time I know it had as many as 80 cash and carry wholesale outlets throughout this area.

By Mr. Coyle:

Q. Do you know whether it is a subsidiary of Thrift-
[fol. 2107] mart?

A. I do not know the corporate structure that exists between the two companies.

Q. At one time was Smart & Final independent?

A. I believe they were.

Q. Over the years you do know that Thriftmart has some sort of control over Smart & Final today, don't you?

A. I believe they do.

Q. And Smart & Final is really a subsidiary of Thrift-
mart, isn't it?

A. This I don't know, because, as I say, I do not know the corporate structure or the relationship that exists.

Q. If an independent is purchasing wholesale groceries from Smart & Final, and competing with Thriftmart, he is really purchasing his groceries from a firm that is at least affiliated with one of his competitors, is he not?

A. I think that would follow.

Q. Now, you mentioned Spartan. What is Spartan?

A. Spartan is also a voluntary cooperative buying association, which was formed back in the early 1920's. I am proud to say that my father was one of the original or-

ganizers of Spartan Grocers, along with several other men in this area, and Spartan has been subsequently acquired by Certified Grocers of California. So it is now a wholly-[fol. 2108] owned subsidiary of Certified Grocers of California.

Q. Other than Orange Empire and Certified with its subsidiary Spartan, are there any other cooperative buying groups in the metropolitan area in the grocery business?

A. Other than Orange Empire or the Certified combination? I do not recall of any at this time.

Q. You talked about drop shipments. How many items can you get on drop shipments?

A. It would be impossible for me to tell you, because I don't believe anyone knows the answer to that question. I can say that there are literally hundreds of items that are available to members of the voluntary cooperative groups on a drop shipment basis.

Q. When a grocer buys through the voluntary cooperative on a drop shipment basis, does he get the 2 per cent discount for paying cash?

A. The voluntary cooperative marks up the merchandise that is drop shipped to the extent of 2 per cent, and they do this either by retaining the cash discount, if it should happen to be 2 per cent, or by adding it to the price of the merchandise in the event there is no cash discount, and it is a net cost. The member receives the same 2 per cent back in the form of a patronage dividend every six months. So the net result is the member owns his goods at chain price, less the discount, delivered to his store.

[fol. 2109] Q. The chains, such as yourself, can buy these drop shipments through Certified just like the independent?

A. We can, yes.

Q. And your stores are buying enough to handle drop shipments, aren't they?

A. Yes.

Q. You mentioned buying produce on the late market. Is it a gamble to wait for produce on the late market? Sometimes does the market run out of produce before they reduce prices?

A. Mr. Coyle, the whole produce market is a gamble. Many things influence produce. I could start with weather, I can start with supply and demand, I can start with many factors which are taken into consideration; but I can

mention the instance of one very successful independent operator, the Japanese boys in Bellflower, Hadi and Mori, who make it a practice of playing the late market, and they have been very, very successful.

Q. Do you buy any soft produce directly from the producer?

A. What do you mean, "soft"?

The Court: Do you mean the grower, counsel?

Mr. Coyle: Yes.

The Witness: May I also ask him, your Honor, to explain soft produce?

[fol. 2110] Mr. Coyle: I should have asked this question:

What is hard produce, Mr. Von der Ahe?

The Witness: Hard produce is items such as are not readily perishable. That includes potatoes, onions.

By Mr. Coyle:

Q. Oranges?

A. Oranges are not considered hard produce.

Q. Just apples and potatoes?

A. Those items which do not perish too quickly.

Q. Are the produce items that are not hard produce considered soft produce?

A. I have never heard of that expression, sir.

Q. Do you buy any produce items, other than hard produce, directly from the growers?

A. I believe we buy corn, we buy melons, we buy oranges on occasion, citrus fruits I might say, things of that nature, semi-perishable but not completely perishable.

Q. Do you buy them because you can save money buying directly from the producer?

A. It swings both ways, Mr. Coyle. Sometimes we save money, and sometimes we don't.

Q. But you can save money by doing that?

A. Sometimes. That is the cost of the product. But then we have the warehousing and distributing function to go through, as I mentioned earlier.

[fol. 2111] Q. You discussed the marketing situation in this metropolitan area in the grocery field in 1930. What were the large chains in 1930?

A. In 1930 I remember we had Ralph's Grocery Company, we had Safeway—

The Court: Let me interrupt you a moment. How many stores did Ralph's have in 1930?

The Witness: Your Honor, I do not know the answer to that exactly, but—

The Court: Would it have been more than five?

The Witness: I think it would have been in the neighborhood of 10 or so.

By Mr. Coyle:

Q. What dollar volume had those stores been doing?

A. I have no idea.

The Court: Counsel, the trouble with dollar volume is—do you know what the annual gross income was in 1930?

Mr. Coyle: Pretty low.

The Court: It got down to 40 billion. Now with the depreciation of the dollar and a few other things it is up to a fantastic figure, it is up to more than 10 times, almost 30 times, so I take it in 19—let's take '32, what was ground round selling for, about 9, 10 cents a pound?

The Witness: That's correct.

[fol. 2112] The Court: What is it selling for now?

The Witness: Around 79 cents a pound.

The Court: You don't sell T-bone any more; that has become old-fashioned, hasn't it?

The Witness: We still have a cut of meat called T-bone.

The Court: Do you know what that sells for a pound now?

The Witness: Around one dollar nine to one dollar nineteen.

The Court: What would it sell for in 1932, if anybody could buy it?

The Witness: I guess around 29 cents.

The Court: So dollar volume is a very tricky thing, counsel.

Mr. Coyle: That's correct.

Q. What chains, other than Safeway and Ralph's, can you think of that were in this area in 1930?

A. Well, in the early 1930's, now we saw the beginning of the Market Basket chain, the Thriftmart chain, the Alpha Beta chain, Roberts Markets was in existence, we started with one store in 1932, Carty Bros., Boys Markets

were starting up, Alexander's Markets were starting up. As a matter of fact, virtually all of the chains in this area at the present time, with the exception of the late-comers [fol. 2113] to the market, began around 1930.

By Mr. Coyle:

Q. I think you stated this morning that if your sales declined 10 per cent you would be in pretty tough shape; is that correct?

The Court: Counsel, what he said was—I am the one that asked the question, what a 10 per cent reduction in volume would do, and his answer was, as I remember it, that it would put him pretty close to the red. Go on from there. I think that was his answer.

By Mr. Coyle:

Q. What would a 20 per cent reduction do?

The Court: In volume?

Mr. Coyle: In total dollar sales, or volume?

The Witness: I can only speculate.

The Court: Give us your best estimate.

The Witness: I would guess that it would result in a net operating loss to the company, a 20 per cent reduction in sales.

[fol. 2114] By Mr. Coyle:

Q. Now, there has been much testimony that between 40 and 10 per cent of your total trade comes from beyond a two or three-mile radius, if you lost that 40—10 to 40 per cent of your total trade you would be pretty close into the red, wouldn't you?

A. That follows—

The Court: That follows automatically, doesn't it?

Mr. Coyle: Yes, your Honor.

The Court: That 2 and 2 are 4. That follows. I will agree to that myself. No matter where he lost the 20 per cent, it would still reduce it to where he says is the red.

I don't quite get your point, it is sort of argumentative, isn't it?

Mr. Coyle: It might be, your Honor.

Q. You mentioned that you retained the 10 to 20 per cent of your customers who reside outside the two to three-mile trade area——

The Court: I think that is a proper question, counsel,—you were about to object—I think what he is getting at is a matter now of the area of competition, is that right, Mr. Coyle?

Mr. Alsup: Yes, your Honor.

[fol. 2115] Mr. Coyle: That is right.

Mr. Alsup: I understood him to say before one to two miles and I understood his question to be two to three miles. Perhaps I was in error.

The Court: Well, reframe your question then. But I think it is a perfectly proper question.

Mr. Alsup: That is a new question.

The Court: All right.

By Mr. Coyle:

Q. If you lost the 10 to 40 per cent of your customers who reside outside the either two to three-mile radius, depending upon which of your experts you are reading, would you be pretty close into the red?

The Court: Counsel, that just doesn't follow mathematically. You see, what you are saying is that if he loses 10 to 20 per cent of the, what we call I would say fringe customers, on the outer skirts of this area—but that doesn't mean he is losing 10 to 20 per cent of his volume. That is where the trick of your question is.

Mr. Coyle: These customers were——

The Court: I am not objecting to your inquiry. But the form of it is that it is non-answerable. It is a non-sequitur, he cannot answer it, as I see it.

Now if you want to ask him if he loses all of the customers outside of a certain area, what effect it will have, [fol. 2116] then that is perfectly proper.

By Mr. Coyle:

Q. If you lose all of your customers outside of the two to three-mile radius where you draw the bulk of your customers, according to your expert witnesses, would that be a serious problem?

A. Would you please mind refreshing my memory on this 10 to 40 per cent customer——

The Court: Now, he is asking you now a very simple question.

The Witness: Okay.

The Court: I think you are going back to a previous question. He is asking you now—suppose, let's don't put it all, let's say you lose the vast majority or the greater portion of your customers existing beyond—what was it, two miles, counsel?

Mr. Coyle: Two miles.

The Court: Beyond a two-mile limit of the store. That is what he is asking you, what effect that would have upon your gross sales and on your net.

The Witness: Naturally, any loss of volume is going to depress our gross and our net. To what extent I cannot tell you, because I do not know how many of our customers come from beyond the two-mile, three-mile, four-mile radius.

[fol. 2117] The Court: Do you have an opinion, in percentage of customers? Let's forget the dollar volume and let's say—I believe the testimony was in this case, somewhere along the line, that a store would run three to four—what was it, four to five thousand customers?

Mr. Coyle: I think it was three to six thousand.

The Court: Three to six thousand, I believe it was.

Now, is that about right, in your opinion, a first-class operation such as Von's or Shopping Bag or Safeway, a top store, would it run three to six thousand customers?

The Witness: Your Honor, that three to six thousand number enters this case because of an interrogatory or deposition which Mr. Coyle was asking me how many customers it would require to operate a store. And I told him I didn't know. And he asked me whether the figure would be three thousand and I said it would be at least three. So he asked me if it would be six, and I said at least six.

So this is a figure Mr. Coyle is introducing.

The Court: I see.

The Witness: Into the case, and it is not my figure, except I said it was a minimum figure to operate a store.

[fol. 2118] The Court: Well, can you say—do you know

the approximate number of customers that you have for, let's say, one of your leading stores? Do you have any idea about that?

The Witness: Yes, I would say that the average number of customers per store is in the neighborhood of 10,000. [fol. 2119] The Court: Now, counsel, you can take that base and go from there.

Mr. Coyle: All right.

Q. If you lost, on a store that has an average patronage of 10,000 customers, if you lost 4,000 of your customers, would you be in financial difficulty?

A. The answer is obviously yes. You have lost 40 per cent of your business.

Q. If you lost 30 per cent.

The Court: Why do you say 30?

Mr. Coyle: Cutting it down—

The Court: 4,000—

Mr. Coyle: I said if he lost 40 per cent, 4,000, and then I said if he lost 3,000.

The Court: I see.

The Witness: Then the 30 per cent, the answer is yes, you would be in serious condition.

The Court: And if it kept up, you would be looking to end that store, wouldn't you?

The Witness: That's right, sir.

Mr. Coyle: If you lost 2,000 customers.

The Witness: That would be 20 per cent.

By Mr. Coyle:

Q. Would that be serious?

A. I think it would be very serious.

[fol. 2120] Q. How about 10 per cent?

A. 10 per cent, to me that would still be serious.

The Court: But let me ask you this, suppose you had a loss of say 15 or 20 per cent for a period of three months, what would you do? What steps would you take?

The Witness: Your Honor, we have encountered that situation, more than once. When new competition comes in and takes some of our business away, we do lose 10 per cent or 15 per cent, or 20 per cent. But we have to adjust

ourselves to operate the store at the new water level where it now is riding.

The Court: That is what I am getting at. Now, what are the steps? I take it you cut down on operation, is that right?

The Witness: Cut down on operation, and the biggest item of expense is, of course, personnel.

By Mr. Coyle:

Q. Do you attempt to gain back your trade that you lost?

A. We do.

Q. How do you do that?

A. By trying to run a good market, by specials, by promotions.

Q. And advertising?

A. Advertising.

[fol. 2121] The Court: You have a store manager for each store, do you?

The Witness: Yes, sir.

The Court: What part does the store manager really play, other than seeing that the groceries are on the shelves properly, that the store is stocked, and that the personnel is conducting their operations as they should? Other than that what does he do?

The Witness: In our business, the store manager is sort of like the captain of a ship. He is responsible for the conduct and the operation of the entire market as a whole.

And then each individual department head, such as the grocery department, meat department, produce, delicatessen, and so forth, is responsible to his supervisors, who are responsible to the sales and promotion managers.

The Court: Well, do you find from experience that the store reflects pretty much the head of the store, the manager?

The Witness: Yes, it does.

The Court: By "reflect" I mean the operation, so far as contact with the public, dealing with the public, the good foot forward, the presentation and all of those things?

The Witness: Yes, your Honor, it does. A good [fol. 2122] store manager can make a successful operation

of the entire market. And a poor store manager that just doesn't have it—no matter what assistance you give him—he still doesn't have it and he can't make the store run. [fol. 2123] The Court: As one witness said, some have it and some don't, is that right?

The Witness: That is very true in our business.

By Mr. Coyle:

Q. Do you do institutional advertising?

A. To a minor degree.

Q. Aren't you doing more of it than you did in the past over the years, haven't you developed more institutional advertising?

A. I am not aware of any increase in the budget.

The Court: Now, by institutional advertising you mean what?

The Witness: I believe counsel is referring to, and I mean advertising which is not price advertising.

The Court: You mean good will advertising?

The Witness: Good will advertising, billboard type advertising or a TV spot, things of that nature.

The Court: In other words, something to the effect if you want to be happy shop at so-and-so.

The Witness: That's right.

The Court: The American public has come to the point that they don't ask for the reasons, they just ask for the flash, is that it? Is that what you mean?

The Witness: Right.

[fol. 2124] By Mr. Coyle:

Q. Does this include advertising in Sunday papers and putting recipes in and things of that nature, in Sunday papers?

A. I don't believe we do that any more, Mr. Coyle.

Q. You discontinued that?

A. We discontinued that. I think I am correct on that.

Q. At one time you were doing that?

A. At one time we did, yes.

Q. At one time you were trying to build up an image of having sort of a custom treatment at Von's stores where you get sort of home economics advice, or cooking advice, weren't you?

A. That is correct.

Q. And this is to create an image that the Von's stores were a little bit better, a little different than other stores?

A. I wouldn't go so far as to say that.

The Court: Well, you are trying to do that every day, aren't you?

The Witness: Trying to do it every way, build up an image or personality to make Von's store the place to shop.

The Court: I take it, Mr. Witness, it is your ambition in this business to make everybody believe that the Von's are the best stores in town, is that right?

[fol. 2125] The Witness: That is our ultimate goal, your Honor. We have got a very strong competition and they have ideas also.

By Mr. Coyle:

Q. When you build up this image then, when you open up a new store in a new area, you go into the area somewhat presold, so that there are people in the area that recognize you because of your image?

A. We hope that is true, just the same as all of our chains and competitors building and developing their image too.

Q. And this image is quite important in a chain operation, isn't it?

A. I do not attach too much importance to it, from a point of equating it in dollars and cents. It is a nice thing to have. Safeway has a very good image for meat. Alpha has always had an image for "sell for less" and other chains the same nature.

Q. Yes.

A. And those personalities stay with the store.

Q. Yes.

A. To that degree they are important. But you have got to be able to deliver what you open the store for, and have the customer come in and determine whether you are operating the store as advertised.

Q. Isn't part of the image having the merchandise [fol. 2126] arranged well and having the aisles clear and having enough check-out counters so that the housewife

finds it convenient to shop in your store, isn't that part of your image?

A. I wouldn't that call an image at all. I would just call that good merchandising. Everybody can do that. You don't get an image for that.

Q. But you get a reputation for having done it. Isn't that an important factor in getting the housewife to your store, rather than some other store?

A. This I mentioned this morning, is one of the reasons a person will shop at a market, everything else being equal, convenient stores, clean stores, well merchandised, all of these are the reasons why people shop at stores.

Q. Now, in your proxy statement you listed some of the advantages of a merger. One of the advantages was that overhead, general and administrative expenses are expected to be reduced as a result of the elimination of duplication. Has that taken place?

A. I believe it has.

Q. Another was the total advertising expenses are expected to be substantially reduced, since duplication will be avoided and advertising campaigns of the combined companies can be more economically and effectively carried on. Has that taken place?

A. I might mention to that point that between the [fol. 2127] Shopping Bag and the Von's stores we advertised in approximately 120 community newspapers. And we both took ads in the metropolitan newspapers. The duplication that was eliminated was one page in the metropolitan newspapers and twelve community newspapers.

Q. In dollars and cents what did that amount to?

A. I don't know.

Q. Was it a fourth of your advertising budget?

A. No, it would not have been that much.

Q. Did you combine warehouse facilities as a result of the merger?

A. Yes, we did.

Q. That resulted in a saving?

A. There is always a saving when you eliminate one function.

The Court: But did that result in a saving?

The Witness: Yes.

The Court: Did you combine warehouse facilities?

The Witness: Yes, we did, your Honor.

By Mr. Coyle:

Q. Did you combine trucking facilities?

A. Yes, we did.

Q. Did that result in a saving?

A. Yes.

Q. And were you able to share specialized management [fol. 2128] abilities?

A. May I have the question again, please?

Q. The proxy statement said that the combined companies will be able to share the specialized management abilities which each of them now possesses through the pooling of executive talent. Have you done that?

A. Yes, we have done that.

Q. And the proxy statement says the inventory of the combined companies will be substantially lowered to the aggregate of their separate inventories. Has that happened? Have you reduced your inventories, that is, your combined inventories?

A. I have not calculated whether we have reduced inventories to be able to satisfactorily answer that question. I think it has happened, but I don't have the figures with which to back up my statement.

The Court: While he is looking that up, have you any idea how much of a reduction you had in executive salaries, as between the before and after, taking the combined executive salaries of both companies and then contrasting it with the after effect? Have you any general idea of what the savings was?

The Witness: Your Honor, I do not believe there was any reduction in executive salaries.

The Court: You mean you kept all of the executives? [fol. 2129] The Witness: All of the executives are employed in the surviving company.

By Mr. Coyle:

Q. Now this morning Mr. Alsop referred you to Government's Exhibit 66, which is these working papers of Mr. Ball in which he analyzed various facets of the Shopping Bag organization.

Mr. Alsup: I think, counsel, these are Mr. Von der Ahe's notes, as he testified.

Mr. Coyle: I am sorry.

Mr. Alsup: Which included——

Mr. Coyle: Mr. Ball's.

Mr. Alsup: Various executives.

The Court: As I understood those were his summarization.

Mr. Alsup: Yes.

The Court: Of the reports that were given to him, is that right?

Mr. Alsup: Yes, your Honor.

By Mr. Coyle:

Q. Now, referring you to the last page of that document—do you find the last page?

A. Yes, sir.

Q. There is a notation "J. Ball—people—savings on payrolls 866,000.00. Did you save \$866,000.00 in salaries [fol. 2130] as a result of this acquisition?

A. As to that one particular item I don't know the answer.

Q. Now, referring you to Government's Exhibit 50, which is the entire projected 1960 net income resulting from combined operations. It indicates there a total increase—I am sorry, have you found the exhibit?

A. 49—I have 49—I have 50, yes.

Q. It indicates a total increase in gross profits of two million seven hundred fifty thousand, and a total reduction of expenses of two million two hundred ninety-six thousand, a total increase to operating profits of five million. Have you enjoyed that saving?

A. Mr. Coyle, as to what constituted the figures I don't know. I can't tell you that the bottom figure on the right-hand column——

Q. Yes.

A. —was attained.

[fol. 2130-a] Mr. Alsup: Will you clarify that for the record, Mr. Von der Ahe? What bottom figure are you talking about?

The Witness: I am talking about the net income here, which was projected in December 1959, at \$3,514,000, and

I believe our results will show that we earned three million five hundred some-odd thousand dollars. It was right on the nose.

By Mr. Coyle:

Q. Referring to Government Exhibit 49, which are the excerpts from J. C. Ball's working papers, and turning to the second to the last page that is not numbered, second to the last page of this exhibit—have you found it?

A. I believe I have.

Q. Under the title Summary, the following statement is made:

“By making the necessary changes in the gross profit structure of the various divisions and instituting warehousing handling charges, both of which can be accomplished immediately, the following increase in gross profits should be realized”——

then it itemized groceries and drugs, meat, produce, delicatessen, and shows a total of \$1,900,000. Did you realize that savings by following these recommendations?

A. Mr. Coyle, as to the ingredients, again, I still have to say I don't know. But I am going to assume that we [fol. 2131] did, because our ultimate projection was accurate for the total.

The Court: Counsel, I thought you were taking the position in this case that the business motive is unimportant.

Mr. Coyle: I am, your Honor.

The Court: You are spending a lot of time on that trying to show that he may or may not have been as successful in the merger, after it was merged, as he expected. Isn't that what you are doing?

Mr. Coyle: Showing they gained competitive advantages; that they have gained savings in the warehousing——

The Court: Is that helpful to you?

Mr. Coyle: It is helpful to us in that it relates to this issue of the fact that Certified is alleged to be able to deliver these groceries to the independents as cheaply as these people can buy, the large chains can buy groceries. As they cut down their warehousing and handling charges,

certainly it gives them added advantages in acquiring and placing this merchandise in their storage.

The Court: What you are saying is efficiency is illegal, is that what you are saying?

Mr. Coyle: No, not at all. I am saying——

The Court: I don't follow you.

Mr. Coyle: I am saying it is relevant to a Section 7 case to show the acquiring firms, or merging firms, get [fol. 2132] competitive advantages which give them advantages over independents.

The Court: If that were the situation, never again could there be a purchase of anything, because no businessman is going to buy something to lose money, that is, if he is in his right mind. I thought that the purpose of purchasing additional businesses was to acquire better economic conditions, situations. Isn't that right?

Mr. Coyle: That is generally the purpose, your Honor.

The Court: Is that the thing that Section 7 has proscribed, prohibited?

Mr. Coyle: I am not going to the purpose; I am going to the effect. The fact that they do get competitive advantages.

The Court: Is that persuasive of the fact that it may restrict competition?

Mr. Coyle: It is part of the background.

The Court: Doesn't it cut just as much the other way, that it may be more competitive, create greater competition? I am wondering.

Mr. Coyle: I understand that your Honor is wondering. It is clear to me that if that as a result of an acquisition or a number of acquisitions, if these chains are getting more and more competitive advantages, and the independent [fol. 2133] ents and the smaller firms are going out of business, we are moving more and more towards the situation where a limited number of firms are going to dominate an industry or a market——

The Court: Counsel, I go along with you, except here is where we part, I am afraid. You are talking about competitive advantages. If that competitive advantage is one which merely gives a particular person a better opportunity to, let's say, get a better grade of merchandise, to put it on the shelves cheaper, or anything that results

from greater efficiency, less expenditure for personnel, that doesn't mean that it is restricting the competition of the other fellow, except insofar as efficiency is concerned. Isn't that right?

Mr. Coyle: If it is driving the other fellow out of business, if we have other fellows going out of business because they can't compete, and you have this movement towards concentration in the industry, then I think it is relevant, showing the tendency towards elimination of competition.

The Court: Concentration, of course, is one thing, concentration is a matter of degree; but, on the other hand, what you really seem to me to be arguing for—and maybe the Supreme Court says this—is that there can be no more mergers. Because every merger has a tendency to bring about—at least, that is the intent of the merger—to bring about greater efficiency, to make higher profits, to lower the cost of operation.

[fol. 2134] This whole movement afoot nowadays, generated through the whole economic structure, is volume, increase the volume, lower the cost, get a great volume, and maybe not so much a higher percentage of net, but more volume. That is what happened, for example, in the stores that just went into bankruptcy. What was it, the Darling Stores? They were getting volume. They got to the point to where they went broke overnight. What was the name of the stores, do you remember?

Mr. Coyle: In the grocery field?

The Court: No. One of the big chain stores that sells—do you know, counsel?

Mr. Alsup: The word Interstate Federation—

The Court: No. We will pass it over. But they were taking and buying smaller stores, and they bought a lot of them, and now they are in receivership. They bought too many. They swallowed more than they could digest.

What I am worried about in this case is, you are proceeding on the theory that if it is proved in the case that Von's Grocery got an improved situation in their buying, an improved situation in lowering their costs, that that in itself has a tendency to prove that it substantially lessens competition. Is that what you are arguing?

Mr. Coyle. I think that is part of the proof. It is

not all of the proof. If you prove this is happening [fol. 2135] throughout an industry, or throughout a market, and that the independents are going out and the chains are increasing their market share, and this is part of it, and it results through an acquisition or merger, it is part of the proof, yes, your Honor.

The Court: Is that what you think the Supreme Court means? Some of the language would seem to indicate it.

Mr. Coyle: I think that is what it means.

The Court: If the Supreme Court's language is to be taken literally, I guess the day of mergers is over. You couldn't merge two barbershops.

Mr. Coyle: That wouldn't be substantial, your Honor.

The Court: I don't know whether it would or not. Suppose you are in an area where people—over in New Mexico, where they are miles and miles apart?

Mr. Coyle: There have to be substantial factors in a significant segment of the economy. These are substantial factors in a significant sector of the economy. This is not just a part of New Mexico; this is Los Angeles.

[fol. 2136] The Court: I understand that. But take a state like New Mexico where the population is relatively small and covers great distances, one store there within a range of 30 to 40 miles would be an important segment, wouldn't it?

Mr. Coyle: I wouldn't think so. I would think that the legislative history, and I think in Brown Shoe, but at least the legislative history makes it clear that the Act doesn't apply to two local concerns in a small community.

The Court: Suppose you are in a square area such as New Mexico and you find out that, say, between Santa Fe and Albuquerque there are three stores, and one of them acquires the other two. Now, that is an area of about 75 miles. What happens?

Mr. Coyle: If they are selling groceries, that might be a serious problem. If you only had one source of groceries, they could charge anything they wanted. Maybe that would be.

The Court: In other words, we are coming to the situation—what you take this Act to mean is that it is an equalization, that you have got to equalize down to the most inefficient, that that is what it means?

Mr. Coyle: I am not saying that. This Act encourages [fol. 2137] natural growth, rather than this artificial growth through acquisition.

The Court: What ought to be required is that everyone in government ought to be compelled to run a business for one year and pay the bills. There is such a change in point of view that you can't realize what might happen. Go ahead.

Mr. Coyle: I have no more questions.

Mr. Alsup: I have just a few brief ones, if I may, your Honor.

The Court: What I mean to say is simply this: There is no greater teacher than overhead.

Mr. Alsup: And experience, your Honor.

The Court: Overhead will give you experience, believe me.

Redirect examination.

By Mr. Alsup:

Q. Mr. Von der Ahe, you were asked about the cost of financing a new store, and I think you were talking about a new supermarket in the 27,000 square foot range; is that correct?

A. The question was directed to developing a new market of 27,000 to 30,000 square feet on acquired ground, fixturizing, and stocking of the merchandise.

Q. Do you know whether or not Certified Grocers of [fol. 2138] California have organized a company to help its members finance their fixtures?

A. Yes, Certified does have a facility to help members finance equipment and fixtures.

The Court: They help them at a price, though, don't they?

The Witness: They help them finance it.

The Court: But at a price?

The Witness: At a lower rate, I believe, your Honor, than the financing companies would charge.

The Court: They get interest, I take it, the charges that go with their coverage—is that what they call it?

The Witness: I don't know.

The Court: What would you say the rate of interest is from Certified when equipment is furnished, do you know?

The Witness: I don't know.

Mr. Alsup: I don't know, either, your Honor. I could get that figure.

The Court: No. I just wondered.

The Witness: I am sure it is nominal. Because Certified is a non-profit organization and all profits return to its members.

The Court: It is like some of these cooperatives. [fol. 2139] You go in and buy something at 40 per cent below cost and find out that you can buy it down the street at 20 per cent below that.

Mr. Alsup: This cooperative, your Honor, is owned by its retail members.

Q. Mr. Von der Ahe, will you tell us what your total capital investment was in your first store when you started out in 1932?

A. Yes. The Von's Grocery Company was started with an initial capital of \$2500.

Q. That was in 1932?

A. That was in 1932. And that is the only capital ever put into the company.

The Court: May I ask him a question?

Mr. Alsup: Yes.

The Court: Why did you pick 1932 to start a business?

The Witness: Your Honor, frankly, prior to 1932 I tried very hard to be an attorney. I was sick and tired of the grocery business and I wanted to enter a dignified profession where the hours were reasonable. I worked—

The Court: You can say this, you have come to feed the people, rather than argue with them.

The Witness: I got my education at night in law [fol. 2140] school, I worked in the daytime. But comes 1932 the law profession also was not very promising, and I went back into a business that I knew something about. At least I could eat the samples in the grocery business, your Honor.

The Court: Did you feel that that was the turning point in the economy, or you just went back because it was a business that you knew?

The Witness: It was a business that I knew. And when the opportunity came to take one small grocery shop and this small store, my dad asked me if I wanted it. My

brother and I talked about it, and he said, "Let's go," and that's the way we got back into the grocery business.

The Court: The economic upturn got going about '36, 1936, wasn't it, '35, '36?

The Witness: Around that time. We had a small recession in 1939, and then we had the war, and subsequent to the war we have been on a boom ever since.

The Court: I take it you are expecting this boom to continue for another hundred years?

The Witness: Your Honor, I am not that optimistic.

By Mr. Alsup:

Q. Is it necessary, in your opinion, Mr. Von der Ahe, for someone desiring to enter the grocery business today to make this large capital investment that you were discussing with Mr. Coyle?

[fol. 2141] A. I did not mean to leave that impression at all, that it requires a large capital investment to get into the grocery field.

Many firms right today have been started recently with small investments. I feel that a merchant has got to learn to crawl before he can walk. He just doesn't start off with a huge investment in land, buildings, fixtures, equipment, and so forth. He starts off by renting a market that has been vacated by a chain store, usually. The fixtures are available to him, either because they have been left in the market, or he can buy used fixtures. Certified has a lenient plan to help the fellow put in his initial inventory, and if he is smart and works his supplier capital until he gets a foothold, he can actually get into the food business with a relatively modest investment.

[fol. 2142] The Court: There are two questions I would like to ask you. No. 1 is, take a person who has had some grocery experience, let's say a clerk in a grocery store, he is a young man, perhaps has had three or four or five years, and he suddenly decides he wishes to go in the grocery business in 1963 in Los Angeles, in a small store, where he himself would be practically the whole institution. How much capital would it take for him to get a store, say, 50 by 100, which would be 5,000 square feet, to open up a fairly good, small store?

The Witness: Your Honor——

The Court: Not buying the store.

The Witness: I understand.

The Court: Not buying the ground, just leasing, and probably buying his equipment on time. How much money would you say for inventory and getting started would require?

The Witness: I think that a grocery department could be opened for not over \$5,000.00, and much of that could be suppliers' money. By that I mean that almost half of the grocery items will be delivered to the store on a weekly or monthly account—and I am talking about milk and bread and butter and potato chips and all of those daily delivery items on which the supplier companies do not demand C.O.D. payments.

[Vol. 2143] The Court: That is one of the points. Is it a custom in the industry to let a fellow start out without making a pretty good financial showing? Do they give him a chance, is that what you are saying?

The Witness: I think it can be said as a truism that these supplier companies will put in the opening order and continue to stock the store. And if the fellow makes any reasonable effort to pay they let him get his feet on the ground.

Many, many companies in this area right now have been financed through supplier money. Some of them got so far behind, your Honor, and they went broke. But I know of many companies that got their toe-hold in this market through supplier money.

The Court: Now, the next question I had in mind was: assuming that such store—I realize the conditions are variable—but assuming one, say, went out to—let's pick a spot, pick a well-populated spot, let's take 3rd and Normandie, that is pretty close to all of these stores around here, isn't it?

The Witness: Yes, sir.

The Court: Suppose he opened up that type of store on 3rd and Normandie. What is your opinion as to his competitive ability with all of those stores? You have got Safeway at the corner of 3rd and Vermont, you have Safeway [Vol. 2144] at the corner of 3rd and Vermont, you have your store—at Irolo, is it Irolo?

The Witness : 3rd and Kenmore.

The Court : 3rd and Kenmore.

The Witness : Yes.

The Court : And you have another one close by?

The Witness : At 8th and Irolo.

The Court : At 8th and Irolo. Well, that is a little bit distant.

The Witness : That is out of the area.

The Court : But down in the little shopping area around, I think along 3rd there are some independent stores, too, aren't there? One or two?

The Witness : One or two, yes.

The Court : What would be the prospects in your opinion, to survive or make a success as an independent grocer?

The Witness : Frankly, I believe it would be excellent.

The Court : Why?

The Witness : Because this particular location you have picked on is a good artery north and south, it is a good artery east and west, it is in an area that is becoming densely populated through the advent of multiple-unit apartment houses and so forth. And an independent ca-[fol. 2145] tering to that type of trade can do a much better job than a chain store.

The Court : Can he—

The Witness : I won't say he will do as much as Ralphs—

The Court : No, but can he meet the prices?

The Witness : He can easily meet the prices, and he can give that extra ingredient which we cannot give, that is personal service.

The Court : Well, that part we will accept. In other words, if he is a man who is disposed to work and serve, he will have a slight advantage in that respect.

The Witness : Admittedly.

The Court : But can he meet the prices?

The Witness : He can meet every price any chain store can throw at him.

The Court : Now, if he meets the prices then what kind of a volume would you say he would have to have to make a success out of that type of business? By "success" I mean make a living, make a reasonable living out of it.

The Witness : Your Honor, if his store did as little

as \$500,000.00 a year he could make at least \$25,000.00, in my opinion, or five per cent.

The Court: Well, how many clerks would that take to handle that volume?

The Witness: Not very many, your Honor.

[fol. 2146] The Court: How many? That is quite a sizable amount of money, \$500,000.00, isn't it?

The Witness: As far as markets are concerned it is very, very small.

The Court: Yes, but I am talking about independent markets.

The Witness: Even for independents, they should do that small and still be classified as a market.

I am assuming that this fellow has a little going concern, and I would say that he could do \$500,000.00 on two or three clerks, plus himself.

The Court: If this gets out into the newspapers I am afraid everybody in the city will be opening grocery stores on every corner, wouldn't you think?

The Witness: Your Honor, this is our very point, that this is known. People who have been in the chain store business are going back into operating single stores for themselves, such as Al Goldstein, John Erwin—one was vice president of Food Giant and another one with the Mayfair Stores—they are going back and operating their own stores because they know that they can compete with the chains, they know they can make more money as independent operators than they earn as executives in the food chains.

You have to have a little know-how——

The Court: Of course, it all depends again upon [fol. 2147] the individual, the same as it depends upon management, I guess, doesn't it?

The Witness: This is the crux of the whole question.

The Court: If you make this so much more glowing you might wake up in the morning and find all the lawyers gone, out in the grocery business.

Mr. Alsop: Your Honor, I have felt that very strongly after talking to many of these single store operators.

The Court: Well, you had better stick to your own business, counsel. Go ahead.

By Mr. Alsup:

Q. You mentioned Mr. Goldstein having started out recently as a single store operator, Mr. Von der Ahe. Can you tell us where he opened up his store, his single store?

A. He opened a store exactly across the street from a new market that we put in in Burbank.

The circumstances were that he was one of the vice presidents of Food Giant. And Food Giant had this store across the street from where we were going to open.

He knew that we would not do Food Giant any good because it was an older store and it is difficult for an older store, as a chain, to compete against a newer store as a chain.

[fol. 2148] So he resigned from Food Giant and he took this store that was Food Giant's store, changed the name to Toluca Mart and he is competing very successfully against us as an independent.

The Court: Counsel it is 25 of 5:00. How much more do you have of this witness?

Mr. Alsup: I would think 10 minutes, your Honor.

The Court: Well, I think we had better—where are we in this case now?

Mr. Alsup: We will be prepared to rest after the conclusion of the testimony of Mr. Von der Ahe.

The Court: How about you, Mr. Coyle?

Mr. Coyle: We have two rebuttal witnesses.

The Court: Are they extensive?

Mr. Coyle: I don't believe they will be extensive.

The Court: I don't know whether to say intensive or extensive after yesterday.

Well, I think before we adjourn I would like again to bring—Mr. Bailiff, get the file off of my desk in chambers there, please.

You may step down, Mr. Von der Ahe.

The Witness: Thank you, your Honor.

(Witness leaves witness stand.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: The clerk has handed me an exhibit here. I don't know what he means, Mr. Clerk, there is some [fol. 2149] mixup here.

The Clerk: That is one of the Government's exhibits marked in the deposition.

The Court: Apparently there is some mixup on one of the exhibits.

Mr. Coyle: That is part of the transcript, page 64.

The Court: All right. All right. Now we have it.

The Clerk: They call it Plaintiff's Exhibit 1, it should be Plaintiff's Exhibit 73.

Mr. Coyle: That is correct. It is out of the transcript.

The Court: Let the reporter hear this, please.

Mr. Coyle: I am sorry.

On page 64——

The Court: If there is an error let's correct it. How do we correct it, Mr. Clerk?

The Clerk: Couldn't we change it to 73,

Mr. Vaughn: I don't know the problem.

Mr. Coyle: One exhibit is the transcript was incorrectly marked Exhibit 1 in the transcript, it should be 73.

The Court: Just mark it then "73."

The Clerk: Change it in the transcript.

[fol. 2150] The Court: Yes.

The Clerk: That is page 64 on the June 12th transcript.

The Court: All right. That straightens that out.

Now, before we go, I want to come back again—you will find, gentlemen, I don't know what trait it is, but I never leave a matter until it is settled.

So back to your 46, counsel, Mr. Coyle, there has been a stipulation, or at least an admission by Mr. Alsup that in 1958 the 20 leading chains of supermarkets in the Los Angeles area competed—I have forgotten, did we leave the word "intensively" in, counsel, or take it out?

Mr. Alsup: No, that was taken out.

The Court: All right. Competed——

Mr. Coyle: I think it is in the transcript.

The Court: What is it?

Mr. Coyle: I think it is in the transcript here.

[fol. 2151] The Court: The thing I am getting at, counsel,

is simply this: That he has admitted that in this area, this economic area, to-wit, the metropolitan area, that in substance that all and every person engaged in the grocery business is in competition in the area. That is the general proposition.

But the thing he has not admitted is that there was intensive or extensive competition between Von's stores and Shopping Bag stores as such, is that correct, counsel?

Mr. Alsup: That is correct, your Honor. I am even willing to go further and state that where a particular Von's and Shopping Bag store could service the same customers and did serve the same customers that competition was intensive.

The Court: That is exactly the point that I was coming to.

Now, I was wondering, under those circumstances, why—what the higher courts—I am not worried about the problem at all, I am just trying to make it easier for the findings in this case—it seems to me that there could be a substitution in 46 of that statement.

As a matter of fact, I can put it in without your consent, counsel, because the following facts are admitted and require no proof—I don't have to have your consent [fol. 2152] to put in what he admits. So I am about—unless you come along—to maybe change the pretrial order and put that into it.

Now, what is the damage to you?

Mr. Coyle: Your Honor, the paragraph of the pretrial order was clear when it was entered into—

The Court: Well, you have been overruled on that and you might just as well give up, counsel, because you are finished, done in, and concluded on that problem. Now, I have told you that I have ruled and I am still ruling and I am adhering to that ruling and I have concluded that there was a misunderstanding. And I am not going to make either party conform to a misunderstanding.

Mr. Coyle: Yes, your Honor. I understand that.

The Court: So that is settled.

I think possibly there was a sincere misunderstanding on both sides. And I think I am probably the one who discovered it, because the minute I read it I realized there must be some misunderstanding.

Mr. Coyle: We raised this last November, your Honor, at the pretrial conference.

Mr. Alsup: We raised it, your Honor, in our motion for—

The Court: Well, whatever you have done in the past, the ruling stands and I am not going to leave it in [fol. 2153] as it is.

Now unless, Mr. Coyle, you come up with some suggested change, I am going to ask counsel to prepare in writing what he will admit, in lieu of paragraph 46, and submit it to the court tomorrow.

Mr. Alsup: Tomorrow?

The Court: Yes. Could you do that?

Mr. Alsup: Yes, your Honor.

Mr. Coyle: All right, your Honor, I will be prepared to say something tomorrow.

The Court: Well, if you have any—if you want to prepare a suggested submission yourself, you can do so, counsel.

Mr. Coyle: I don't know what I will prepare, your Honor.

The Court: But give up, believe me, you might just as well give up. I am going to change it. It is changed. And if he comes forward with an admission of any kind, I am going to put it in there. It is a question of how far he would go.

Because it seems to me the facts are clear that there was competition in the whole area, as you have agreed, and has been admitted, the whole metropolitan area, the general competitive situation. Nobody is disputing that. is that correct, Mr. Alsup?

[fol. 2154] Mr. Alsup: That is correct, your Honor.

The Court: But where the dispute comes in is when it says each and every defendant was competing with each other. That is where the whole crux of the issue is. And he says that is not correct. And I am tempted to believe that it is true, that it isn't correct.

Mr. Coyle: If your Honor please, would the word "generally" be part of that stipulation, competed generally—that is what I think—

The Court: I will say this, if I were in his place I doubt if I would give that admission. So I can't ask

someone to do something that I don't think I would do myself.

Mr. Coyle: I don't understand what the admission means then.

The Court: This admission, by putting the word "generally" would mean to me that the store in Long Beach, if there were one—was generally in competition with the one, with the Von's store in La Crescenta. And they are about 35 miles apart.

Mr. Coyle: Suppose you add "are all part of the general competitive pattern of the Los Angeles metropolitan area"?

The Court: That is all taken care of. He has admitted, counsel, that the competition in the grocery field, [fol. 2155] that is, the—what is the term I am trying to remember?

Mr. Coyle: Line of commerce?

The Court: The line of commerce is throughout this entire metropolitan area, among all those in the grocery business. That he is admitting.

Mr. Coyle: Let him come in with an admission that says that—

The Court: He has stated it right in open court, did you not, counsel?

Mr. Alsop: Yes.

The Court: Am I misquoting you?

Mr. Alsop: No, so long as it is understood, we are not saying, as your Honor put it, the Von's store in Long Beach competed with the Shopping Bag store in La Crescenta.

The Court: The difference is, as I think where the whole problem came in is the distinction between "extensive" and "intensive," isn't that where the problem lay?

Mr. Alsop: That is where it lay, your Honor, exactly.

The Court: And intensive means penetrating, as I understand it. Whereas extensive means the whole, broad attack.

Now, I am not in a position to determine when it is intensive and when it is extensive. So what he is [fol. 2156] trying to say to you is that he will not admit that a store in Long Beach, a Von's store in Long Beach, is actually in competition, directly in competition with

a store of Shopping Bag in La Crescenta. That is what he is saying, in effect.

[fol. 2157] Mr. Coyle: What it amounts to is, he is saying that there is a general competitive pattern in the Los Angeles metropolitan area.

The Court: I think he has conceded that. At least it is conceded, and my understanding is that there is a general competitive pattern in the whole area.

Mr. Coyle: And that these—

The Court: Am I wrong about that?

Mr. Alsup: I am a little confused by what he means by "general competitive pattern," but certainly we are all competing in this area.

The Court: What I would assume it would mean is this: If everybody closed up his grocery store tomorrow in Maywood, everybody that wanted to be in the grocery business would head for that area tomorrow to put up a store. Isn't that right?

Mr. Alsup: That's for sure.

The Court: So there is competition.

Mr. Coyle: I think it means more than that. I think it means that each of these trading areas overlap on the other ones, so that a price change or competitive activity in one trading area by a repercussion of effects will reach through the whole area.

The Court: Counsel, I am willing to admit if they sold sugar at a cent a pound, and bread at a cent a [fol. 2158] pound, and made enough of a price reduction in Long Beach, that some of the people over in La Crescenta might drive over and stock up.

Mr. Coyle: More than that. That their competitors in Long Beach would have to change their price, and you would have a chain reaction of price changes.

The Court: There is no quarrel about that. That isn't what he is talking about. As I understand it, he is saying, in effect, We will not concede that the Von's store in Maywood is in direct competition with the Shopping Bag store in La Crescenta.

Am I wrong about that?

Mr. Alsup: No. You are absolutely right, your Honor. Perhaps this would help counsel's problem—

The Court: You draw it up. It is a quarter to 5:00 and we have had a long day, draw up what you consider to be the admission that you will make, in place of 46, and maybe we will substitute it tomorrow. Show it to counsel in the morning before we take up the session in court.

Anything further, gentlemen?

Mr. Alsup: Nothing further, thank you.

Mr. Knight: Nothing further, your Honor.

The Court: We will recess.

(Whereupon, an adjournment was taken to 10:00 o'clock a. m., Friday, June 14, 1963.)

[fols. 2159-2161] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES J. CARR, Judge Presiding

No. 336-60-CC Civil

(Title omitted)

Transcript of Proceedings—June 14, 1963

Place: Los Angeles, California

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[fol. 2162] LOS ANGELES, CALIFORNIA, FRIDAY,
JUNE 14, 1963, 10:15 A. M.

The Court: Gentlemen, you know I have other matters that are pressing. I can't just hold this court in abeyance while you confer.

Mr. Alsup: We apologize, your Honor. We each had a version, and I think we are reaching agreement, but I think we can do that during the recess, if that's agreeable.

The Court: All right. Proceed. I have 150 other cases waiting, gentlemen, to say nothing of the criminal cases.

THEODORE A. VON DER AHE the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Redirect examination. (Resumed)

By Mr. Alsup:

Q. Mr. Von der Ahe, yesterday, we were talking about a possible theoretical smallish store located, say, at Third and Normandie Avenue in Los Angeles. To your knowledge, are there existing supermarkets available to persons desiring to enter the business on their own today?

A. If you are referring to available locations with vacant buildings on them that could be converted into a

[fol. 2163] supermarket, yes. I can think of one right now which is a Market Basket store which is located right in the heart of Temple City.

Q. Do you know of any persons who have entered the business in recent years by taking over one of these older supermarkets?

A. Most of the persons who have recently entered the business have entered through taking an older market that has been vacated or given up, usually by a chain. I can think right now of Perry Burnside, who up until 1955 was an employee for Shopping Bag Markets, and in 1957 he acquired a market out of receivership and opened it, and is doing very well. He later acquired another market in Ontario that had been vacated, opened it, and is a very good competitor. He subsequently got a McDaniel's Market when McDaniel's was in difficulty, on Arrow Highway in the Covina district and is also doing well there. As a matter of fact, he is now operating successfully five stores. I can think of Joe Goldstein, or Al Goldstein, who I mentioned yesterday, who took the Toluca Market from Food Giant and has a successful operation.

I can mention John Erwin—

[fol. 2164] Mr. Coyle: If your Honor please, I object to this characterization "successful." This witness wouldn't know whether it is successful or not.

The Court: Well, counsel, I have told you in advance that I disregard conclusions.

Mr. Coyle: Yes, your Honor.

The Court: Unless there is some foundation laid I wouldn't pay any attention to the word. It would mean nothing to me. It is just his opinion, unless he has some foundation to show. Success may mean that he is burning the town down for a while, and on the way to the bankruptcy courts.

Mr. Alsop: I might say, your Honor, that John Erwin and Mr. Goldstein are both witnesses for the Government, their affidavits are on file and I don't think it is necessary for Mr. Von der Ahe to go into those details.

The Court: Are you contending they are successful or unsuccessful, counsel? I didn't know that.

Mr. Coyle: I don't know, your Honor, and this witness doesn't know.

Mr. Alsup: You don't know, you haven't read their affidavits, counsel.

The Court: Well, I will say this, generally speaking unless there is some foundation for expert testimony, I disregard it.

[fol. 2165] Mr. Alsup: Surely, your Honor.

The Court: In other words, I can say you are a successful lawyer, and the only thing I know is you are in this court. I don't know how many cases you have lost recently, counsel.

Mr. Alsup: I hardly ever get to try any any more, your Honor. I was on that subsidence case for five years.

The Court: Well, you may find out what that is about some time, too. It is a difficult problem, I know.

Mr. Alsup: Yes, sir.

Q. You mentioned yesterday, Mr. Von der Ahe, that you had one or more stores that were not successful to your concern. Can you give us examples of one of those?

A. We have a store in San Marino, at the corner of San Gabriel Boulevard, that is now not having enough sales to make it a profitable operation for a chain company.

The Court: You put a qualification on that, "for a chain company," what do you mean by that?

The Witness: Well, your Honor, there are certain costs that a chain has to assess to every store, which in the case of one particular store, if the sales aren't sufficient to absorb those costs that store does become a losing operation.

The Court: Do you allocate the costs evenly among [fol. 2166] the stores?

The Witness: According to their sales.

The Court: Oh, you base it on a pro rata of sales?

The Witness: Yes, your Honor. And I am talking about administrative and executive expenses, cost of maintaining offices—

The Court: In other words, their share—

The Witness: Their share of the expenses, they have to share. And when their sales are just not sufficient to stand their part of the burden, that store does become unprofitable.

The Court: Suppose a store breaks even for two years, would you keep it?

The Witness: Yes, we would.

But this is the same type of a store, if I might add, that becomes very attractive to an independent because he can get in there and take that same volume and operate and the cost of doing business is much less than the chain can. And so the difference is in things such as salaries, actually make a good profit out of the same store that the he has no administrative or executive overhead. So he can chain would lose money on.

By Mr. Alsup:

Q. What is the gross of that store you referred to, [fol. 2167] Mr. Von der Ahe?

A. It is in the neighborhood of seven hundred fifty to eight hundred thousand dollars a year.

Q. And have there been any changes in the market area in recent years surrounding that store?

A. There has been a large supermarket move in across the street from us. And there has been a more aggressive independent move down the street a ways, who actually is taking the business away from us, with the result that the sales in this market have been declining.

The Court: What do you attribute the loss of business to this independent to? Prices, personality, management, what, if you know?

The Witness: Your Honor, principally due to the fact that he is a good operator, he is on the job, he is running a good shop and we are running one by remote control and we are just not keeping up with him.

The Court: Do you think it is the personal equation that is doing it?

The Witness: I would give a lot of weight to that, yes, sir.

The Court: All right. Go ahead, counsel.

By Mr. Alsup:

Q. In your opinion, Mr. Von der Ahe, based on your experience in the industry, is it necessary to have a store [fol. 2168] located in a shopping center in order to have a successful and profitable store?

A. I do not feel that it is necessary to be in a shopping center. And I think the facts will prove that most of the stores in this area are not in shopping centers.

I can think of one very good firm here that have, for a long time, had a policy of not going into shopping centers, and they have only put a few stores in shopping centers in recent years. But they are the oldest chain in this area, and they are very successful and they have built their business on free standing locations.

Most of Safeway Stores are not in shopping centers.

We did not have a store in a shopping center until we built our No. 16 store—No.—yes, No. 15 store, which was actually our No. 16. But we were able to develop without having stores in shopping centers.

[fol. 2169] Q. What is this oldest firm that you refer to?

A. Ralph's Grocery Company.

The Court: What is the objection, if any, to shopping centers as contrasted to what you call it, a free—

The Witness: Free-standing store.

The Court: —a free-standing store?

The Witness: There is no objection to shopping centers.

The Court: There must be some reason that these companies prefer to have their free-standing locations.

The Witness: I believe, if we are referring to Ralph's now, they have historically always acquired the fee of the land on which they built their buildings, and it was sometimes not possible to do that when someone else was developing a shopping center. In other words, they could not isolate that one section of ground and earmark it for a market. And Ralph's have taken several leases, but for the most part they prefer to own the land and own the building. And it cannot be denied that they have been very successful in building a chain of stores that have a very high average sale per store.

The Court: How about Safeway, do you know why they would prefer the free-standing store?

The Witness: Safeway have built quite a few free-standing stores, and have good ones, I might add. I am thinking of one in Beverly Hills, I am thinking of the one [fol. 2170] at La Brea and Sunset Boulevard, like the one at 3rd and Vermont opposite the Ralph's office, and these stores also do very well. They are unfettered with—pardon me.

The Court: Tell me, is there a parking problem insofar as the great markets are concerned? I realize they have parking space, but is there distance to the cars, or something of the kind, whereas in a free-standing market you have just your own parking?

The Witness: This is one of the considerations. In our business we do ask that the customer wheel her own basket out to her car and unload it. She sort of has to provide that service for herself, which box boys used to provide. And in large shopping centers where the parking lot is immense the women just hesitate to push that cart too far. It is not convenient parking for the customer.

The Court: If a person, for example, is going to go into the Woolworth store, they might very well park in front of the grocery store—is that right?

The Witness: That's right.

The Court: —and walk there, and leave those places filled?

The Witness: That's true.

By Mr. Alsop:

Q. Nevertheless, Safeway has some stores in shopping centers?

[fol. 2171] A. Safeway has stores in shopping centers, also.

But the mere fact that a store is in a shopping center does not guarantee its success at all. There are some shopping centers right now that are very shaky, and I have seen some that have gone bankrupt.

A shopping center is just a gathering together of some compatible tenants, co-tenants, as we call them, which would be a market, a drugstore, and a variety store, and a few service shops—

The Court: The main thing in a market, I assume, is

getting a reliable tenant on a long-term lease so that you can get financed; that's about the main thing, isn't it?

The Witness: This is what the insurance companies demand.

The Court: This is what the builders look for?

The Witness: And the builders want, yes, sir.

By Mr. Alsup:

Q. Mr. Von der Ahe, yesterday you were asked some questions by Mr. Coyle about Defendant's Exhibit AV, which comprises defendant's answers to plaintiff's interrogatory No. 6, and Defendant's D, E, F and G thereto. Can you tell us how the answer to this interrogatory and exhibits were prepared, compiled?

The Court: Counsel, you can state that for the record, can't you?

[fol. 2172] Mr. Alsup: Well, it was typed in our office, your Honor. I thought it would be helpful for the record—

The Court: Go ahead and state it, and then see if we can't just eliminate the problem in that fashion.

Mr. Alsup: When the interrogatory was asked, your Honor, we talked with Mr. Von der Ahe about the feasibility of checking with all of the store managers and getting their idea as to who the competitors were in their respective areas. Mr. Von der Ahe pointed out to us that this would be an awfully burdensome thing, and it would be far better to have some outsider go around and check with each of the store managers, that he might get a more objective view as to what the competition was. For that reason we employed a professor at Occidental College to go around and interview each of these store managers of the Von's-Shopping Bag stores. He first talked with Mr. Von der Ahe, got the addresses, interviewed the store managers, and then prepared the documents on the basis of the store managers' questions. And Mr. Von der Ahe went over it and found some errors. One of his store managers had neglected, for example, to mention the Farmers Market nearby, one of the most successful markets as your Honor knows, as a competitor at all. And Mr.

Von der Ahe checked with the store managers and made certain corrections.

Is that a correct statement?

The Witness: That's correct.

[fol. 2173] The Court: Well, I take it, it is still an admission, but you are just explaining the purport of the admission; is that what you mean?

Mr. Alsup: Yes, your Honor.

The Court: All right.

Mr. Alsup: To the extent that it is an admission, it is an admission. We think that it shows very little competition, your Honor.

Q. You were asked by Mr. Coyle, Mr. Von der Ahe, about Shopping Bag Store No. 1 at 1611 West Whittier Boulevard in La Habra, which lists as its No. 1 competitor, in order of importance, the Von's No. 27 Store at 15704 Whittwood Lane in Whittier, and then lists eight other stores, and then 11 markets, independent, about half mom-and-pops and about half superettes, and a proposed new Food Giant.

Will you turn to Von's 27 on that exhibit and state what the manager of Von's 27, Store No. 27, listed as his competitors in order of importance?

The Court: Counsel, you can read those. It is all in evidence, isn't it, can't you just read them?

Mr. Alsup: Yes, your Honor. I will be glad to.

The Court: Just read them into the record.

Mr. Alsup: Store No. 27 of Von's, your Honor, lists as No. 1 competitor, Thriftmart across the boulevard; No. 2, Safeway, three-quarters of a mile away; Esko, three- [fol. 2174] quarters of a mile away; Alpha Beta, three-quarters of a mile away; Gateway, two and a fourth to two and a half miles away; A & P, three-quarters of a mile away; and as No. 7, the Shopping Bag Store No. 1, two and a half miles away; and as No. 8, probably ten mom-and-pops and small independents in the area within a two and a half mile radius.

The Court: Is this mom-and-pop an invention of yours, or is this something in the industry?

Mr. Alsup: It is a phrase very common to the industry, your Honor. As a matter of fact, one of the Government

witnesses testified when he opened up his market in 1927, I think it was 7,000 or 8,000 square feet, it was one of the largest markets in the area at that time. He said now it is a mama-and-papa store, as he called it. I said, are there other similar stores in the area? He said, "Some that you can just call mom stores."

The Court: In other words, if the husband and wife both work it is a mom-and-pop; is that what you mean?

Mr. Alsup: I think it really depends on size and area served is what they refer to.

The Court: I think it originated from the idea that it was just a one-man store and then became a man and his wife.

Mr. Alsup: I am sure that's so, your Honor.

The Court: Of course, I suppose the way we are [fol. 2175] going they will have to hire extra people or they can't stay open; there will be a law requiring them to hire extra people one of these days.

Mr. Alsup: In Exhibit AV counsel referred yesterday to Shopping Bag Store No. 21 at 1183 Quad Way and said that Von's No. 27 Store was listed as a competitor. The exhibit shows, with respect to Shopping Bag Store No. 21, that the competitors, ranked in order of importance, were first, Market Basket, a half mile away; Esko Market, a mile and a half away; Stater Bros., about two miles away; Alpha Beta, about three miles away; Box Market, about two and a half miles away; Safeway, about three miles away; Ralph's, about two and a half miles away; and as eighth, Von's No. 27, two and a half miles away; and ninth, approximately four or five mom-and-pops within a two-mile radius.

Q. This store, Mr. Von der Ahe, at 1183 Quad Way, Whittier, a Shopping Bag store, can you tell us what has happened to that store?

A. Yes. Last year this store was replaced by a newer building on the same site and opened as a new Von's market. We did not feel that there was any competition between this store and the Von's 27, which you have referred to, at Whittwood Lane in Whittier, because had we thought so we would not have opened this new store. And the results since have proven our belief, because this new store which

[fol. 2176] we have opened has increased sales of about 35 to 40 per cent, at the same time the Whittier store also has enjoyed an increase in sales.

Mr. Alsup: I might point out, your Honor, that the exhibit with reference to Von's Store No. 27 lists six competitors, and then seventh on the list, Shopping Bag Store No. 1, which we have previously referred to, and then probably ten mom-and-pops, but it does not list this Shopping Bag No. 21 on Quad Way in Whittier.

[fol. 2177] By Mr. Alsup:

Q. Mr. Von der Ahe, in your opinion——

The Court: May I ask a question?

Mr. Alsup: Certainly.

The Court: Mr. Coyle, how many stores do you claim were competing between Shopping Bag and Von's at the time of the merger?

Mr. Coyle: If your Honor please, I don't have that figure available now. I think we have filed an answer to an interrogatory in which we listed the stores that we claim.

The Court: Do you remember, Mr. Alsup, how many are claimed?

Mr. Alsup: I don't recall how many, your Honor.

Mr. Coyle: I can find it for you.

The Court: I was wondering if that didn't more or less solve our—are you in disagreement on that? Is there disagreement between counsel on the number that were actually competing?

Mr. Alsup: Yes, your Honor.

Mr. Coyle: Yes.

The Court: How much disagreement, one store, one and a half, or how much?

Mr. Coyle: I would say twenty stores.

[fol. 2178] The Court: Twenty?

Mr. Coyle: Yes, sir.

The Court: What do you consider competing areas between stores, Mr. Coyle?

Mr. Coyle: We consider ten minutes driving time, your Honor.

The Court: Ten minutes on the freeway and you can almost be in Santa Ana.

Mr. Coyle: A distance of ten minutes driving time—customer's driving time, in other words, a radius around the store of ten minutes driving time.

The Court: You go by the speed?

Mr. Coyle: Yes, your Honor.

The Court: Well, let me ask you this question, for example: In Beverly Hills they have two Safeway Stores. They have one at Olympic and Beverly Drive and they have one at Santa Monica and—I forget the street, just below Doheny.

Now, I live at 909 North Bedford Drive. Now you say that minutes are going to decide me which one of those stores to go to?

Mr. Coyle: That is one of the things you will take into consideration if you are driving. You will go to the one probably that you can drive to more quickly, unless there [fol. 2179] is some other factor of convenience or image or some other factor.

The Court: Well, is there any norm for an area such as the metropolitan area on driving time? Don't you really have to do it in miles?

Mr. Coyle: I think in miles you arrive at on the basis of driving time, rather than—I think the driving time comes first. In other words, if the consumers know how long it is going to take them to get to the store, yes. But I think driving time takes into consideration things such as barriers, accessibility, and congestion on the highways and all those things. So it is really the driving time.

The Court: Then, according to you, suppose we had in a ten-minute area, suppose we had a Safeway Store 11 minutes away, a Ralphs Store 12 minutes away, another—all of the chains within 11 to 15 minutes, and we had an independent 7 minutes away. Is it your contention the average person would go to the independent 7 minutes away, because of the time factor?

Mr. Coyle: No, your Honor. I don't have any contention. These are things that people—you have to determine from experience and surveys. And I don't say that the ten minutes is the limit. I say that the average housewife will drive at least ten minutes to get to a shopping center. She will consider driving ten minutes.

[fol. 2180] The Court: You know, housewives will drive

all the way from Westwood to the Valley just because they like a store.

Mr. Coyle: This is true, they will. I don't say they don't—

The Court: And sometimes to save 15 cents, they will spend three dollars.

Mr. Coyle: I am sure they will.

The Court: For example, I don't know whether you are acquainted with it or not, but there is a new cheese that comes out of Denmark and sells in Beverly Hills I think for \$2.75. You can buy it in the Valley for \$1.85, for example, at the Piggly Wiggly. Now, don't you know that a housewife who is going to save money to buy a fur coat would jump in her Rolls-Royce and journey all the way over to the Valley and back to save that extra money, and probably spend three or four dollars doing it? You are acquainted with those factors, aren't you?

Mr. Coyle: Yes, sir, there are many variables.

The Court: There are quite a few variables, I am sure, aren't there?

Mr. Coyle: That's right, I agree with that. I couldn't agree more.

The Court: All right, go ahead, counsel.

The facets of these problems are so great that I [fol. 2181] don't know how you are going to—I don't know how one human being can encompass them in his mind.

Mr. Alsup: Your Honor, I had planned to go through several more stores, but the exhibit really does speak for itself.

The Court: The exhibit shows it, doesn't it, counsel?

Mr. Alsup: Yes, it shows it.

The Court: You are just having him make an argument for you, is all you are doing.

Mr. Alsup: I want to point out that the only reason I did this, your Honor, is because counsel referred to specific ones and read them into the record yesterday. And it seems to me that I can—

The Court: Well, each and every one of those cases there is a list showing all of the alleged competitors right in those so-called admissions.

Mr. Alsup: Absolutely, your Honor.

The Court: Which are in the record. And I don't think it is necessary.

Mr. Alsup: All right. And actually the exhibit shows, your Honor, on its face there are far more Shopping Bag stores located close to Shopping Bag stores than there are Shopping Bag stores located close to Von's stores.

There are just one of these stores—

[fol. 2182] The Court: I think where the great problem comes in in all of these cases, counsel, and where many a case is won or lost is in the findings. A lawyer that can't draw findings—and there are a few that can't, believe me—can be prepared to lose a great number of cases in his career. I get findings all the time, it just keeps me busy trying to revise them and get them in condition so that they can go up.

So in this particular case I am forewarning the both of you that findings are going to be complete, full and correct.

Mr. Alsup: I might say in that connection, if I may, I think the Judicial Council has suggested on these antitrust cases the parties prepare and submit their proposed findings in advance, so the court might see them.

The Court: I was going to come to that, counsel. As a matter of fact—it is quite a burden, I realize on the lawyers—but in antitrust cases those proposed findings can be of great assistance in locating the places in the record.

Mr. Alsup: That is what we propose doing.

The Court: I take it you anticipate referring to the record in your findings, do you, proposed findings?

Mr. Alsup: Yes, your Honor. That is what we propose doing, if it is agreeable to your Honor.

[fol. 2183] The Court: How about you, Mr. Coyle, do you see any objection to that procedure?

Mr. Coyle: I would be glad to do that, your Honor.

The Court: I would appreciate it, as a matter of fact I think it would be of great help, it would be of great help in the case. So we will just here and now decide that that procedure will be followed.

Mr. Coyle: Very well.

The Court: That is prior to any decision.

Mr. Coyle: Yes. I might point out our appendix to our brief is almost proposed findings.

The Court: I think that is probably true, and if you want to let that stand——

Mr. Coyle: No, I think we will amplify it.

The Court: All right.

Mr. Coyle: And put the references in it.

The Court: All right.

Mr. Alsop: Just one or two more questions, your Honor.

Q. With respect to Shopping Bag stores, Nos. 28 and 32, the first located in La Puente and the second one in West Covina, can you state, Mr. Von der Ahe, whether there have been any changes in the competitive picture in this area—in these areas since your answer to the interrogatory [fol. 2184] was prepared?

A. This store No. 28, the Shopping Bag No. 28, which is indicated as being located in La Puente, and store No. 32 which is shown as being located in West Covina, are both in the same general area known as West Covina.

And this area has been overrun with discount stores, and this is the principal new type of competitor which has entered the area, to the point where there has been great concern even to the discount house operator. It is over-discount housed. And most of them are also selling food, which they use as inducements to attract their trade.

Q. Do you have any further comments, Mr. Von der Ahe, on this exhibit?

The Court: There are a couple or three questions, if you are finished, I would like to ask, counsel.

Mr. Alsop: Very good, your Honor. I am finished.

The Court: Mr. Von der Ahe, the question here is for this court to decide, as you know, whether there has been a substantial lessening of—a prospect or possibility of a substantial lessening in competition by reason of this merger.

What in your opinion has actually occurred as the result of the merger between Von's and Shopping Bag? I am speaking now of the entire merger as a merger, not just one store against another store.

[fol. 2185] The Witness: Your Honor, I say this honestly and as truthfully as I can, that in my opinion the merger of Von's and Shopping Bag has in no way lessened competition in this area.

The Court: Has increased it?

The Witness: The merger occurred over three years ago. And I believe that since that time we have seen new entries into the retailing of food stuff in this area, we have seen our major competition expand and grow.

In no way at all do we have any sort of dominance or market shares or market powers that are significant. And this is just a situation where two local firms, one competing on the south and west sections of this area——

The Court: You mean in the general market?

The Witness: In the general market. And the other competing on the north and east section of this general market, and for the most part divided by the very heart of the City of Los Angeles. So for the most part our stores were so far apart that people in one area didn't even know of the existence of the other one.

There were a few areas where we both had stores in the same locality, but in the opinion of management, your Honor, these stores did not compete with each other—and if they did I suggest, sir, that it was of a very minor nature, and that they competed only for a very few customers, [fol. 2186] and that in itself was very inconsequential and insignificant.

The Court: Let me ask you this, do you think that the merger has increased competition?

The Witness: I think that the competition in the whole area has increased. And I think that this merger might, in some way, have stimulated an increase in competition.

This is one of the very few areas in the United States where five of the first six largest national chains will be operating.

The Court: Let me ask you this, you read the announcement I take it that Kroger is attempting to come in now?

The Witness: Yes.

The Court: Well, will that stimulate competition or will it tend to, in your opinion, to stifle it?

The Witness: Kroger is a very active, aggressive organization. And I think that they will come in here with ideas of expansion, and they are going to try to take their share—as much of their share of this market as they can get. And I believe that competition will also fight to retain its share of the market, which is going to result in more com-

petition, I feel, more intense competition. And I think that the general public as a whole will benefit.

The Court: Well, when an announcement of that kind [fol. 2187] is made—after all you are the policy in the management of the corporation—do you take into consideration those matters the moment they are announced, do you give thought to them?

The Witness: Your Honor, we did give thought to it, yes.

The Court: In other words, if Kroger says we are coming in this area, now you have a general idea of where they will come immediately?

The Witness: Right.

The Court: But you also anticipate that there will be some expansion, is that right?

The Witness: That's right.

The Court: So do you start more or less in the military sense, begin to give thought to tactics, or to anything of that kind?

The Witness: I can't honestly say we get that deep, no, sir. We are just going to try to run a very good organization and we are going to be competitive.

The Court: But if Kroger starts to put in a store within a mile or so of your stores, it is going to become rather competitive, isn't it?

The Witness: Assuredly, yes, sir. I might add that there was an article in this morning's paper that Food Fair has now acquired the Fox Markets.

[fol. 2188] The Court: Yes, I noticed that also.

The Witness: They say they intend to continue to expand and develop the Fox chain. This, too, is going to be more competition.

The Court: Well, there isn't very much further you can go on price reduction, is there?

The Witness: Not unless we eliminate some of the frills, let's say, that we have now built into our business. I am talking about our long operating hours, talking about such things as savings stamps and some of the conveniences and niceties that right now people are willing to pay for, and which we are willing to provide.

We can draw back and go on to an austerity program, more or less, like we did when the depression was here. And we could operate cheaper if we had to.

The Court: Well, I suppose if you reduce the hours to eight hours and no night work and things of that kind, you could make a substantial reduction on the price of food?

The Witness: It would not be too much, your Honor, but it would be—it could result in savings, yes, sir.

The Court: But assuming that you maintained the same facilities, the same quality distribution, you have gone about as low as you can go on price reduction, haven't you?

[fol. 2189] The Witness: I think so.

The Court: Another price reduction and you will be giving it away at a loss, won't you? Selling it at a loss?

The Witness: Well, there is—

The Court: That is a substantial price reduction.

The Witness: I agree with you, yes, sir.

The Court: Now one other question. Is there any policy, or has there been—first, in Von's—respecting the type or area that you have sought to place stores in? In other words, you find one area, say, is a working man's area, another is a banking man's area, so to speak, more or less the white collar. Have you, in your policies respecting the placement of stores for Von's, has that entered consideration?

The Witness: Your Honor, we take that into consideration when we are out searching for new locations. The ideal location is one where there is a concentration of single family units of preferably five homes on an acre, a television set in each home, which indicates that they are staying home—younger neighborhoods, younger people raising families, who do most of their eating at home, new areas that have a potential growth factor built into them. And these are the kinds of areas that we like because they can expand.

[fol. 2190] The Court: Well, you do know that certain areas have a greater per capita wealth than others?

The Witness: Yes, that's right.

The Court: For example, San Marino?

The Witness: That's right.

The Court: I take it you don't design your stores with the idea in mind that you are trying to get per capita wealth; it is population and the number of homes, more?

The Witness: That's right, and the number of persons per family.

The Court: The fact that it is a rich community or middle class community doesn't necessarily have much to do with it?

The Witness: That's right.

Mr. Alsup: One last question, your Honor.

The Court: I am through.

By Mr. Alsup:

Q. Do you have any opinion, Mr. Von der Ahe, whether the former Shopping Bag stores are more or less effective competing units today than they were before the merger?

A. Well, Mr. Alsup, I don't know if I answered that yesterday when I quoted the figures by saying that the then existing Shopping Bag stores in 1960, as against the same stores in 1962, showed an increase in sales of about [fol. 2191] \$6,000,000; and I assume, perhaps in answer to your question, that they are now a more effective competitive factor than they were prior to the acquisition.

The Court: What is your opinion? You say you assume. What is your opinion?

The Witness: My opinion is, yes, they are.

The Court: They are more effective competitors against whom? Everybody? Any particular one?

The Witness: Your Honor, this entire area has competition. We are just trying to be effective competitors and provide effective competition in this area.

The Court: What you mean to say is that you are trying to get as many customers as you can get; is that right?

The Witness: That's true, yes.

The Court: And the others in the area, where the Shopping Bag stores are located, are trying to do the same thing?

The Witness: That's right.

The Court: And some of them are being fairly effective, I guess, aren't they?

The Witness: True.

The Court: Who would you say, as a whole—one group of stores must come closer to you than some other group—[fol. 2192] Safeway, Ralph's, or someone? Do you follow my thinking?

The Witness: Your Honor, the competitor who I respect

the most in this town, because he is a very good competitor, a legitimate competitor, and still very vigorous and runs a good operation, is Ralph's Grocery Company.

The Court: But the thing that I am getting at, which one comes closer to you? Let's assume there is a four-mile radius that applies to your stores, now. Who meets your competition the most in numbers?

The Witness: I believe that we compete against more Safeway stores than we do any other chain in this area.

Mr. Alsup: No further questions.

The Court: Anything further, Mr. Coyle?

Mr. Coyle: Two questions, your Honor.

Recross-examination.

By Mr. Coyle:

Q. You say you compete against more Safeway stores than any other chain. But the Safeway stores are generally smaller than some of the other chains, aren't they? The Ralph's stores are larger than the Safeway stores?

A. All of the new Safeway stores are larger supermarket type stores.

Q. But Safeway is still operating many of the older stores that are smaller, aren't they?

[fol. 2193] A. They probably are.

Q. Now, Mr. Von der Ahe, did you make a statement recently that "Competition is not cutthroat nor are rival chains trying to cut prices drastically. There is no intense price war on today, thanks to the healthy situation here"? Did you make that statement?

A. I made that statement, but it wasn't recently.

Q. How long ago was it?

A. Those were remarks I made before the Los Angeles Security Analysts, and what I was referring to, counsel, was the same as I was stating yesterday, that one of the reasons we cut prices was to eliminate these ridiculous below-cost prices, which we did. As a result of eliminating these ridiculous low cost situations, it resulted so that I used the expression that there was no longer any cutthroat prices going on.

Q. And rival chains are no longer trying to cut prices?

The Court: Counsel, I don't know whether he can answer that. Can he?

Mr. Coyle: That's what he said. I am asking him. That's what he said in this statement.

The Witness: I don't know if I said that, or not, either. Maybe I was quoted as having said it, but it was all part of a general plan, which I explained yesterday, [fol. 2194] your Honor, and I was trying to explain the effect of that price reduction on those hundreds of items, which we put into effect, and that resulted in the eliminating of those, as I said, ridiculous, silly prices, such as sugar, five pounds for 19 cents, and coffee 19 cents a pound, and so forth.

By Mr. Coyle:

Q. Based on your experience, are rival chains trying to cut prices today?

A. Certainly they are.

Mr. Coyle: No more questions, your Honor.

The Court: There is one question I wanted to ask. It slipped my mind for the moment. One thing I did want to ask, are all the chains and all the stores giving away Blue Chip or other stamps now?

The Witness: I think for the most part, your Honor, stamps are being given away by most all retailing outfits, yes, sir.

The Court: I suppose you are in the predicament that if you agree not to give them away, you probably will get prosecuted for antitrust conspiracy, wouldn't you?

The Witness: In this day and age, I would agree with you.

The Court: And if you do agree to give them away, then you will get prosecuted for agreeing to give [fol. 2195] them away?

Is that about the government's position, Mr. Coyle, they can't agree on anything regarding stamps?

Mr. Coyle: I don't know, your Honor.

The Court: You are a leader at the Bar and a member of the Antitrust Department.

Mr. Coyle: I am just out here trying this case, your Honor.

The Court: You just happen to be here because the train went through. All right.

Is that all?

Mr. Coyle: I take a plane, your Honor.

The Court: No further questions?

Mr. Coyle: No further questions.

The Court: Step down, Mr. Von der Ahe.

Mr. Vaughn: Before the defendants rest, your Honor, we have one final matter. We would like to offer the affidavit of W. D. Hayden. I have the original and one copy here.

Let me explain if I can the circumstances surrounding this affidavit. Some time ago Mr. Hayden, who is assistant operations manager for Von's, and a former Shopping Bag executive, was asked by Mr. Von der Ahe to prepare a list of all discount houses with food departments in the Los Angeles metropolitan area. This was done not for [fol. 2196] this lawsuit, but another purpose. Mr. Hayden prepared such a list, based on interviews or based upon his personal observation and information given to him by Von's employees, their supervisors. We found out about that list and thought that it would be a good list, and we had Mr. Hayden attach an affidavit.

The government took his deposition, and we found there was some error in the list he made. I think in part the information on which he relied was inaccurate, and in part because his concept of a discount house for purposes of his original study for Mr. Von der Ahe was a little different than our concept of a discount house for the purposes of this case. Recognizing that these errors existed, Mr. Hayden thereafter went out and personally checked all the discount houses which he had listed and made a new list, which is our Exhibit AR. He also prepared a map which reflects graphically what appears on the list. It shows the Von's stores in the Los Angeles metropolitan area, and the discount houses he lists with food departments. That exhibit is AR. Now the government has not had an opportunity to cross examine him on his most recent affidavit, but I think that we, through stipulations, can work out something that will solve that problem.

The Court: Do you desire to, counsel?

Mr. Coyle: Mr. Hughes has been in negotiation

[fol. 2197] with Mr. Vaughn on this matter, and he will discuss it, your Honor.

The Court: All right.

There isn't anything to discuss; I just want to know what you will do.

Mr. Coyle: He will tell you.

Mr. Vaughn: If Mr. Hughes wishes to propose a stipulation, we might be able to agree.

The Court: I will give him the opportunity, if he wants it, to take a deposition.

Mr. Coyle: No, I don't think so.

Mr. Hughes: It is our proposal to allow the defendants to put in their proposed Exhibit AR, I believe, the affidavit of Mr. Hayden, which was handed to us on June 11th, along with the list of discount houses, with certain modifications in that list. These modifications are, one, that there are five discount houses listed on that list, which were not listed on the original list of Mr. Hayden which was submitted last January.

Mr. Vaughn: That I will stipulate to.

Mr. Hughes: There is a store listed as a Big Bear Store owned by Lucky Markets, which to our knowledge is just an ordinary grocery store.

Mr. Vaughn: Could we stipulate, with respect to that store, Mr. Hughes, and the other store, which you can [fol. 2198] identify, that the FBI went out and checked those stores, and if an FBI agent was called to the stand to testify, he would testify that according to his observations these were ordinary grocery stores and not discount stores, but that he did not check prices? Is that right?

Mr. Hughes: For this Big Bear Store in Torrance.

Mr. Vaughn: The Big Bear Store in Torrance, and—

Mr. Hughes: And for a store listed as a Low Cost market, division of Mayfair, the FBI agent, if called to testify, would state that this is just an ordinary Mayfair store.

The Court: I take it you are stipulating, both of you, to that?

Mr. Vaughn: Yes.

Mr. Hughes: Stipulate to that.

The Court: The stipulation is accepted.

Mr. Hughes: Further, your Honor, we did take Mr. Hay-

den's deposition, and we would like to place his deposition in the record.

The Court: All right. The affidavit will be admitted and copied into the record, and the deposition will be copied thereafter.

Mr. Hughes: In order for this deposition to make any sense, the original affidavit should also be put into [fol. 2199] the record, because he was cross examined upon that in the deposition.

The Court: It is all right with me, but I imagine that every time you gentlemen offer another document, that even the Overseas Distribution of Funds for America must flinch, because the cost of this record will be, I would say, mildly stating it, considerable.

Mr. Vaughn: I agree with that, your Honor. I wish it were less.

The Court: It may develop that this record will cause an increase in competition in the grocery line by Von's having to raise the price of groceries, I don't know.

The stipulation is accepted and those documents are admitted into evidence.

Mr. Vaughn: That includes Exhibit AQ, which is our map; is that right, Mr. Hughes?

Mr. Hughes: That's correct. That map has been corrected to show the new affidavits?

Mr. Hughes: Yes.

The Clerk: AQ and AR, is that right?

Mr. Vaughn: Yes.

The Clerk: The affidavit of Mr. Hayden will be Exhibit BI.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibits AR, AQ, and BI.)

[fol. 2199a] DEFENDANTS' EXHIBIT BI

AFFIDAVIT OF W. D. HAYDEN

STATE OF CALIFORNIA,

County of Los Angeles, ss:

W. D. HAYDEN, being first duly sworn, does hereby depose and state as follows:

I am the Assistant Operations Manager of Von's Grocery Co.

In September and October, 1962, I was requested to make a list of all discount houses which sold groceries and other food items in Los Angeles and Orange Counties. I obtained the information requested from all possible sources, including personal observation and newspaper advertisements. I also had each of Von's supervisors report to me the names, addresses and other pertinent information concerning discount houses with food departments in their respective districts.

By piecing together all of the information so obtained, I developed the list attached to this affidavit. In all, I found 48 discount houses with food departments. Each of them is sufficiently close to at least one and usually several Von's stores to be in competition with them. On the attached list, the discount houses named are listed by Von's supervisorial districts. The name and address of each discount house is set forth on the left hand side of the list, together with information concerning the type of food products sold at each outlet, whether the discount house is restricted to members only and the name of the operator of the food [fol. 2199b] department (shown in parentheses) where that operator also operates a conventional supermarket.

On the right hand side of the list are the numbers and addresses of the Von's stores which are near the discount houses listed and in competition with them.

In addition, I procured an aerial map of Los Angeles and Orange Counties (as well as a portion of San Bernardino and San Diego Counties) on which each Von's store is located by a white circle and identified by its number. I have pasted on this map stickers which show the name and location of each of the discount houses with food de-

partments which are named on the above referred to list (plus two others in San Bernardino County and one other in San Diego County which are near Von's stores). This map is Exhibit —.

The attached list and the map referred to above show that Von's faces competition in many areas from discount food outlets. I know from my own observations and experience that the sale of food products in discount houses is a relatively new form of grocery retailing and that most of the discount houses which I have listed commenced operations after the merger of Von's and Shopping Bag, thus providing a new form and kind of competition both to Von's and other conventional retail grocery concerns in the Los Angeles metropolitan area.

/s/ W. D. Hayden.

Subscribed and sworn to before me, this 23 day of January, 1963.

/s/Elizabeth Folger, Notary Public in and for said County and State.

[fol. 2199c]

Discount Houses

District #1 10-19-62

Gemco (Lucky)
1801 N. Glendora
La Puente

Complete Food Center

Member

Scoa
Orange & Service Road
West Covina

Complete Food Center

A B C (formerly Wonder Fair)
848 S. Barranca
West Covina

Complete Food Center

White Front
Grondhal & Azusa
Covina

Complete Food Center

(Hollywood Ranch Market)

More, (Thriftimart)
599 N. Azusa
Covina

Complete Food Center

Member

Zody
615 N. Azusa
West Covina

No meat, produce or dairy

Golden Rule
9521 E. Valley Blvd.
Rosemead

Complete Food Center
(Philadelphia Food Fair)

More (Thriftimart)
Rosemead & Garvey
San Gabriel

No meat or produce

Member

Unimart (Food Giant)
Rosecrana & Valley
Pomona

Complete Food Center

Member

Low Coast (Mayfair)
831 E. Holt
Ontario

Complete Food Center

#31 973 S. Glendora Ave.
West Covina

#32-1170 W. Garvey Blvd.
West Covina

#68-15427 Amar Road
La Puente

#70-960 W. Arrow Highway
Covina

#36-517 S. Glendora Ave.
Glendora

#55-1407 Baldwin Ave.
Arcadia

#57-4806 N. Peck Road
El Monte

#58-11039 E. Valley Blvd.
El Monte

#71-2470 N. San Antonio Ave.
Pomona

#50-304 E. Foothill Blvd.
Upland

#54-130 West "G" St.
Ontario

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Discount Houses

District #2 10-19-62

More
9682 Garvey Blvd.
South San Gabriel

Complete Food Center

Member

29-1000 E. Valley Blvd.
Alhambra

Serv Mart Inc.
8909 E. Washington
Pico-Rivera

Complete Food Center

Member

40-1201 W. Whittier Blvd.
Whittier
60-9406 E. Washington Blvd.
Pico-Rivera
62-9130 E. Whittier Blvd.
Pico-Rivera
61-546 E. Cullen St.
Whittier

Giant-Mart
Main & Palm
Alhambra

Complete Food Center

56-2200 W. Valley Blvd.
Alhambra
67-127 N. Garfield
Monterey Park
77-300 W. Main
Alhambra

[fol. 2109e]

Discount Houses

District #3 10-19-42

A B C Union Store 3328 W. Bolsa Santa Ana	No meat, produce or dairy Member	
CMA of America 1440 S. Los Angeles St. Anaheim	Complete Food Center Member	
Fed Mart 500 N. Muller Anaheim	Complete Food Center Member	#26-12151 Brookhurst Ave. Garden Grove
Gemco (Lucky) 9700 Lincoln Anaheim	Complete Food Center Member	#33-9922 Katella Anaheim #63-1845 W. Orangethorpe Fullerton
Murray Manor 911 N. Brookhurst Fullerton	No meat or produce	
White Front 2222 S. Harbor Anaheim	Complete Food Center under construction— no meat, produce or dairy until completion	
Key Co. Orangethorpe & Euclid Fullerton	No meat or produce	
Leonard's (Mayfair) 12891 Harbor Blvd. Garden Grove	Complete Food Center	
Zody's Chapman & Brookhurst Garden Grove	No meat, produce or dairy	
U-Disco 12500 Bellflower Blvd. Downey	Complete Food Center	#5-1001 Paramount Blvd. Downey #35-9058 E. Firestone Downey
[fol. 2199f]		
Big "A" 5500 Cherry Long Beach	Complete Food Center (Foods Co.)	
Cal's Stores 2500 Carson Lakewood (Mayfair)	Complete Food Center Member	#19-4480 Atlantic Blvd. Long Beach
Fed Co. 5436 N. Woodruff Lakewood	No meat, produce or dairy products Member	#25-4200 N. Woodruff Ave. Lakewood #35-9058 E. Firestone Downey
Unimart 11600 E. Alondra Norwalk	Complete Food Center (Food Giant) Member	
Zody's 5933 E. Spring Long Beach	No meat, produce or dairy products	

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Discount Houses

District #4 10-19-62

C M A of America 184th & Vermont Torrance	Complete Food Center Member	
Sav-Mart 23401 S. Western Torrance	Complete Food Center	
Zody's 1413 Hawthorne Redondo Beach	No meat, produce or dairy	#6-5036 Pacific Coast Highway Torrance
Big Bear (Lucky) Sepulveda & Hawthorne Torrance	Complete Food Center	#14-1260 W. Redondo Beach Blvd. Gardena
Big Ben (Ralphs) Crenshaw & Pacific Coast Highway Torrance	Complete Food Center	
White Front Hawthorne & Torrance Blvd. Torrance	Complete Food Center To open January 1963	
Low Cost 3071 Rodeo Road Los Angeles	Complete Food Center	
Fed Co. 3535 S. La Cienega Los Angeles	Complete Food Center Member	#15-3644 W. Santa Barbara Los Angeles #16-10780 W. Pico Blvd. Los Angeles
More (Thriftmart) Sepulveda & National Los Angeles	Complete Food Center Member	#20-6921 La Tijera Blvd. Los Angeles
Unimart (Food Giant) Jefferson & Sepulveda Los Angeles	Complete Food Center Member To open January 1963	

[fol. 2199h]

Discount Houses

District #5 10-19-62

White Front
16040 Sherman Way
Van Nuys

No meat, produce or dairy

Big "A"
8341 Canoga Park
Canoga Park

Complete Food Store
(Foods Co.)

Cal Stores (Mayfair)
Van Nuys & Spencer
Canoga Park/Pacoima

Complete Food Center
Member

Zody's
Reeseda & Devonshire
Canoga Park

No meat produce or dairy products

More (Thriftmart)
Etiwanda & Vanowen
Reeseda

Complete Food Center
Member

Fed Co.
14920 Raymer
Van Nuys

Complete Food Center
Member

[fol. 2199i]

Discount Houses

District #6 10-19-62

Fantastic Food Fair
Van Nuys Blvd. & Glenoaks
Burbank

Complete Food Center

Sure Inc.
200 W. Olive
Burbank

Complete Food Center

Unimart (Food Giant)
2311 Hollywood Way
Burbank

Complete Food Center
Member

Zody's
San Fernando Road & Burbank
Burbank

No meat, produce or dairy products

#17-6655 Van Nuys Blvd.
Van Nuys
#22-18247 Sherman Way
Reeseda
#23-9011 Woodman Ave.
Pacoima
#28-20151 Roscoe Blvd.
Canoga Park
#39-19333 Victory Blvd.
Reeseda
#74-16130 Nordhoff St.
Sepulveda
#78-9119 Reeseda Blvd.
Northridge

#64-2150 N. Glenoaks
Burbank

[fols. 2199-1-2199-2] DEFENDANTS' EXHIBIT BI

IN UNITED STATES DISTRICT COURT

No. 336-60 cc

Deposition of WILLIAM DELBERT HAYDEN, taken on behalf of the Plaintiff, at Room 808, Federal Building, Los Angeles, California, commencing at 1:45 P.M., Tuesday, May 21, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to oral stipulation.

[fol. 2199-3] WILLIAM DELBERT HAYDEN, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Coyle:

Q. Mr. Hayden, would you please state your full name and address for the record.

A. William Delbert Hayden, 1110 Rodeo Road, Arcadia.

Q. What position of employment do you hold with Von's Grocery Company?

A. I am the assistant to the retail operations manager.

Q. Were you formerly associated with Shopping Bag?

A. Yes.

Q. What position did you hold with Shopping Bag?

Mr. Alsup: At what time, Mr. Coyle?

Mr. Coyle: At the time of the acquisition.

Mr. Alsup: In March 1960.

The Witness: In March 1960 I was in charge of the produce and the meat operation.

Mr. Coyle: Q. Are you related to Rube Hayden, who is president of Shopping Bag?

A. Yes. He is my brother.

Q. You have prepared an affidavit dated January 23, 1963 in which you state that you were requested to make [fol. 2199-4] a list of all discount houses which sold gro-

ceries and other food items in Los Angeles and Orange Counties. Who made this request of you?

A. Ted Von der Ahe, the president of the company.

Q. What was your understanding of what the words "discount house" meant?

A. Well, it is merchandise that is being undersold on all the chains in L.A., is what I took it for.

Q. A cut-rate store?

A. Yes.

Q. It would be a cut-rate grocery store?

A. Well, it would be a discount grocery store. We are selling less than the other chains in L.A. are selling.

Mr. Alsup: Do you want to clarify it?

They sold other than grocery items, did they not?

The Witness: Oh, yes. They sold anything you can buy at any department store, anywhere they sell appliances.

Mr. Coyle: Q. Does a discount house under your definition sell appliances?

A. Yes.

Q. Do they sell refrigerators?

A. Yes.

Q. Stoves?

A. Yes.

Q. Would they sell furniture?

A. Yes.

[fol. 2199-5] Q. Do they sell soft goods?

A. Yes.

Q. And these are items that are not normally sold in grocery stores?

A. No, they are not.

Q. Referring to the listing that you attached to your affidavit, you note on the right-hand column certain Shopping Bag and Von's Stores which you indicate are sufficiently close to be in competition with the listed stores which you term discount stores. How did you determine whether these stores were sufficiently close to be competition?

A. Well, we have—These stores are all in a radius of five miles.

Q. Is five miles sufficiently close to be in competition?

A. Well, we feel that we can draw that far. But these are all closer than that.

Q. You feel that you can draw five miles?

A. Yes.

Q. That is based upon your experience in the industry that you can draw five miles?

A. Yes.

Q. You have been in the grocery industry how long?

A. Since 1932.

Q. When you draw from this five-mile range do customers pass other stores to get to your stores?

[fol. 2199-6] A. Yes.

Mr. Alsup: I object to the question on the ground that it is confusing and ambiguous and no foundation has been laid.

Mr. Coyle: Q. Based upon your experience have you found that customers will pass other stores in this five-mile distance to get to your store?

A. I think you will find that in any business.

Q. Now referring to the page marked "District 1," referring to the store labeled More and referring to the notation "Complete Food Center," what does that notation "Complete Food Center" mean?

A. Well, what we call a complete food center would be meat, produce and the dairy, and everything that is carried in a grocery store.

Q. And you checked this store and you found that it carried meat and produce and dairy?

A. That's right.

Q. When did you check this store to find that it carried meat, produce and dairy?

A. Right after their opening.

Q. When did they open?

A. I don't know the exact day but it would be less than a year.

Q. Referring to the other stores listed in this appendix on District No. 1 and District No. 2, wherever the notation [fol. 2199-7] "Complete Food Center" appears it indicates that you checked the store and found that it carried meat, produce and dairy and frozen foods?

A. Yes.

Mr. Alsup: Do you mean by that question the witness

personally, Mr. Coyle, or some supervisor under his direction?

Mr. Coyle: I asked him if he checked it.

The Witness: I checked this one, yes.

Mr. Coyle: Q. And did you check the others also?

A. Yes. All on this page, yes.

Q. The page marked "District 2," did you check all on that page?

A. Yes.

Q. And on District 3, you checked all the stores on that page?

A. The Fed Mart I didn't. That was checked by the supervisor and the district manager of that district.

Q. And he reported to you and said they carried meat, produce and dairy?

A. Yes.

Mr. Alsup: What page are you referring to?

Mr. Coyle: District 3.

Mr. Alsup: I am sorry.

Mr. Coyle: Q. Referring to Page 2 of District 3, did you check these stores?

[fol. 2199-8] A. The only one that I checked personally is the Cal Store.

Q. You found it carried a complete food center?

A. Complete food center.

Q. The others were reported to you as having food centers?

A. Right.

Q. Then on District 4?

A. The Sav-Mart I did not check.

Q. That was reported as operating and having——

A. The district man reports it.

Q. And it was reported that they were selling items such as appliances and soft goods that aren't normally sold in grocery stores?

A. Right.

Q. What other stores on this page did you not check?

A. The Fed Mart and More I did not check.

Q. They are reported as carrying complete lines of groceries?

A. Yes.

Q. Now with respect to District 5. Did you check those stores?

Mr. Alsup: Off the record for a minute.

(Discussion off the record.)

Mr. Coyle: Q. I call your attention to the fact that the store called "Unimart" on the bottom of District 4 is listed [fol. 2199-9] "To open January 1963." You haven't made a subsequent check of that store?

A. Yes.

Q. Now referring to District 5, how many of the stores on that list did you check?

A. Fedco, I have never checked that one.

Q. But you checked all the others?

A. Yes.

Q. You checked both to find that they were selling appliances and other items and also that they were selling food?

A. Our main interest was the food.

Q. But to determine whether they were a discount house you would have to check whether they were selling appliances and other items too?

A. Well, food is what we were mostly interested in in the discount.

Q. Now referring to District 3, you list there Leonard's as a discount store operated by Mayfair and having a complete food center. I believe that was one of the stores you checked yourself.

A. Yes.

Q. You found that it carried meat and produce?

A. Yes.

Q. How large a grocery section would Leonard's have?

A. Square feet?

[fol. 2199-10] Q. Yes.

A. That is pretty hard to answer. Of course, they have it all included in this large building. It must be 20,000 square feet, I would say.

Q. 20,000 square feet of groceries, including fresh meat and produce and it is operated by the Mayfair Markets?

A. Yes.

Q. When did you check the Leonard's store?

A. I checked that a couple of years ago, right after it opened.

Q. You have never checked since?

A. No.

Q. So you don't know whether today it is selling a complete line of groceries.

A. Well, I haven't heard any rumors that it has changed. And our district men, they have reports that they fill in when any changes are made in competition.

Q. They would have reported on the other stores as well, that is on this listing, if there had been any change?

A. Yes.

Q. You would be surprised, I guess, if Leonard's at Garden Grove has a 7200 square foot grocery center and doesn't carry any fresh meat or produce? Would you be surprised if that were so?

A. I sure would.

Q. Do you doubt—

[fol. 2199-11] Mr. Alsup: I object to the form of the question on the ground that it is argumentative and assumes facts not in evidence. You are not testifying, Mr. Coyle, but if you want to be sworn and testify you are welcome to do so.

Mr. Coyle: I asked him if he would be surprised and he said he would be. And I also am asking him now if this notation would prove to be incorrect might other notations on your appendix also be incorrect.

Mr. Alsup: I object to the form of the question on the ground that it is argumentative and assumes facts not in evidence, and I instruct the witness he need not answer. I have no objection to specific questions but not argumentative questions.

Mr. Coyle: I will ask him a specific one.

Q. Was this Leonard's notation made in the same manner as the other notations on your appendix?

A. What do you mean by that?

Q. They followed the same procedures with respect to Leonard's as you did with the other sources listed in your appendix?

A. No. Because most of these I have called on myself.

Q. You said you called on this one yourself.

A. At the time I called on them they had produce and meat in it.

Q. Now referring on the same page to Murray Manor, did you inspect the Murray Manor?

[fol. 2199-12] A. Yes.

Q. You found it to be a discount store?

A. All they had was the appliances.

Q. They didn't—

A. They don't have produce or meat.

Q. Or food?

A. No food.

Q. What does this notation "No meat or produce" mean with respect to Murray Manor?

A. That they didn't have meat or produce in them.

Q. But does it also mean they didn't have any groceries in them?

A. It means it didn't have meat or grocery.

Q. When you checked it did you find that they were selling dry groceries out there?

A. No, I don't believe they were.

Q. They weren't selling dry groceries?

A. No.

Q. They weren't selling any groceries?

A. They were in the discount appliances.

Q. How many of these other stores listed here didn't have any groceries in them?

A. Zody's.

Q. Zody's does not have groceries?

A. They are heavy with soft goods and drugs.

Q. No groceries?

[fol. 2199-13] A. No groceries.

Q. Are there any others that didn't carry groceries?

A. I think Zody's is the main one that doesn't.

Q. What was the purpose of listing Zody's?

A. Because they are a discount in the drug items and they have like waxes, items on that order and hardware items that we have in the grocery store.

Q. No food items?

A. No food items.

Q. Now referring to the Key Company, appearing on District 3, did your store manager report that that store

is in competition with these various stores listed on the right-hand column of your appendix?

A. Yes, they were in competition with Garden Grove and the Fullerton store.

Q. Did you inspect the Key Company yourself?

A. I can't remember on that one.

Q. To the best of your knowledge is the Key Company in operation and competing with those stores listed on the right-hand column?

A. They would be competing, yes.

Q. Do you know if the Key Company were out of business?

A. I don't know about this location, but they had one in Burbank that they are out of business in.

Q. Is that the Key Company in Burbank?

A. Yes. It is not even listed on this.

[fol. 2199-14] Q. The Key Company in Burbank has gone out of business but you didn't list it.

A. It was listed as Sure, Incorporated.

Q. That is out of business?

A. Yes.

Q. When did that go out of business?

A. Right at Christmastime, in November or December. That is in District 6.

Q. It went out of business about a month before you signed this affidavit stating that it was still in business?

A. That was made in October.

Q. The affidavit was signed January 23, 1963.

Mr. Alsop: It refers to the survey made in October, Mr. Coyle, if you will read it. Made in September and October 1962.

Mr. Coyle: Q. You made no effort to check in January 1963 before you signed this affidavit to determine what had happened subsequent to September 1962 when the survey was made?

A. No. I was under the understanding that it was still open at Christmastime. The district man turned it in to me that way. But at this time it was still Sure.

Q. You don't know whether the Key Company, the other Key Company in District 3, has gone out of business?

A. No, I don't.

Q. But your records would indicate that it is still in [fol. 2199-15] business and that is what you compiled this table from?

Mr. Alsup: Do you know the answer at this time?

The Witness: No.

Mr. Coyle: Q. Referring now to District 3, Page 2, and calling your attention to Fedco listed for Lakewood, would that Fedco be selling food products?

A. Complete food center.

Q. District 3, Page 2?

A. Oh. I was looking at Anaheim. You are referring to Lakewood. This is one that the district man turned in.

Q. They reported it as selling food products?

A. He says here, "No meat, produce or dairy."

Q. Would they be selling dry groceries?

A. The way I take it there they wouldn't be.

Q. They wouldn't be selling dry groceries? Are dry groceries meat?

Mr. Alsup: Mr. Coyle, I think your phrase "dry groceries" may be ambiguous, because in our agreed line, "groceries and related products," we have included drug products and other items. If you want to refer to "food items" perhaps it would be clearer.

Mr. Coyle: Q. Would this Fedco at Lakewood be selling food items such as packaged cereals?

A. I really couldn't say because I didn't check that store.

Q. When you made the affidavit what did you intend to [fol. 2199-16] convey with this term "No meat, produce or dairy products"?

A. Well, I think it would have grocery items in it.

Q. You think it would have grocery items?

A. Yes. Cereals and such as soaps.

Q. And it would have a grocery department in it?

A. Without the meat, produce or dairy.

Q. Referring to another Fedco listed for Van Nuys, I think it is in District 5, it is listed as having a complete food center. That indicates that it is selling—

A. That would have everything.

Q. Did you inspect that store?

A. No, I didn't inspect that one.

Q. It was reported to you in the course of this survey that you had made in September as carrying a complete food center?

A. That's right.

Q. With produce and meat?

A. Produce, meat and dairy.

Q. And your district store managers reported to you that they faced competition from that store in the meat, produce and dairy products?

A. Yes.

Q. Now referring to District 4, to the store listed as a Sav-Mart, is that listed as a discount house which sells major appliances and stoves and refrigerators and soft goods and also has a grocery department in it?

[fol. 2199-17] A. That is the one in Torrance there, the Sav-Mart?

Q. Yes.

A. Yes.

Mr. Coyle: I ask that this be marked as Hayden Exhibit No. 1 for Identification, being a picture of the Sav-Mart store in Torrance.

(The photograph referred to was marked by the notary public as W. D. Hayden Exhibit 1 for Identification and was returned to counsel for the plaintiff.)

Mr. Alsup: You represent this photo was taken on the time and of the store you are questioning the witness about?

Mr. Coyle: That is correct?

Q. I show you W. D. Hayden Exhibit 1 and ask you if this is the Sav-Mart store you referred to on the page numbered District 4.

A. I can't remember.

Q. Would it surprise you if this Sav-Mart store is a grocery store and not a discount center and it has never handled appliances or white goods or any of these other items?

Mr. Alsup: How do you define a discount store, Mr. Coyle?

Mr. Coyle: In terms of the witness' definition.

The Witness: Is this one of the stores that I said I was in?

[fol. 2199-18] Mr. Coyle: Q. I don't know whether you said you were in it. This is one of the stores that you reported as a discount store handling appliances and white goods and soft goods in addition to food.

A. All I can say is that is the way the district men turned it into me.

Mr. Coyle: I ask that this be marked as W. D. Hayden Exhibit 2 for Identification, being a picture of the Big Bear store in Torrance.

(The photograph referred to was marked by the notary public as W. D. Hayden Exhibit No. 2 for Identification and was returned to counsel for the plaintiff.)

Mr. Coyle: Q. Would you examine W. D. Hayden Exhibit No. 2 for Identification and tell me if you recognize that as a photograph of the Big Bear store in Torrance.

A. Yes.

Q. Is the complete name of this store "Big Bear Foods"?

A. I don't know whether it is Big Bear Foods or what. Big Bear.

Q. Is this a conventional grocery store rather than a discount house?

A. Yes. They converted it over.

Q. When did they convert it over?

A. About a year ago.

Q. Sometime in May?

[fol. 2199-19] A. Somewhere in there.

Q. Six months before the survey in September?

Mr. Alsup: When you say "converted it over," will you clarify that, Mr. Coyle?

Mr. Coyle: He said it.

Mr. Alsup: Converted from what to what?

Mr. Coyle: The witness said they converted it.

Mr. Alsup: From what to what?

The Witness: From a Lucky store to a Big Bear.

Mr. Coyle: Q. But it was never a discount house?

A. It is a discount store right now.

Q. Does it sell appliances?

A. No. It is just a discount food center. It is just a regular grocery store. They went in and lowered prices.

Q. A regular grocery store that sells at lower prices?

A. Yes.

Q. On the same page, referring to the Low Cost store, can you tell me what chain operates the Low Cost store?

A. Mayfair.

Q. You didn't list the Mayfair on your appendix?

A. No, I didn't.

Q. In some instances you list the Mayfair chain that owns the store and others you don't. Why is that, Mr. Hayden?

A. Just an oversight.

Q. There may be other oversights?

Mr. Alsup: I object to the form of the question on the [fol. 2199-20] ground that is is argumentative and instruct the witness he need not answer.

Mr. Coyle: Q. Have you checked the appendix to determine whether there were other oversights?

A. Yes.

Q. You didn't discover this oversight when you checked the appendix?

A. No.

Q. Now referring to that Low Cost store operated by the Mayfair chain, does that store sell appliances?

A. This was just a regular market they have changed to this Low Cost.

Q. You mean this is a regular market that cuts prices once in a while?

A. Yes.

Q. Now referring to District 1, where you have listed a Low Cost operated by Mayfair in Ontario, is this a discount store that handled appliances and soft goods?

A. They have some soft goods but I don't believe they have any appliances. It's a regular grocery store again, a grocery operation.

Q. It is a regular grocery operation?

A. Before they changed it to this Low Cost. It was just a regular Mayfair store.

Q. And then they lowered the prices.

A. And changed it to the Low Cost.

[fol. 2199-21] Q. Now referring to District 3, Page 2, it lists Cal Stores for Mayfair. What does Mayfair have at Cal Stores?

A. The way I understand it they just have the food center and the others are leased, the other departments.

Q. You say they are just operating a regular grocery store in a discount center?

A. I would say that.

Q. Would you say that with respect to the Gemeo operation of Lucky that they are just operating a regular grocery store in a discount center?

A. I believe that is right. And the rest are leased departments.

Mr. Alsop: Mr. Coyle, just to clarify it for me, by your use of the phrase "regular grocery store," do you classify a mom and pop as a regular grocery store?

Mr. Coyle: I will ask this witness if he does.

Q. Do you classify a mom and pop as a regular grocery store?

A. Well, on a small scale I would say.

Q. Do you class a bantam store as a regular store?

A. Well, they have the main national brand items, I would say, in them.

Q. The bantam stores would be a modern mop and pop?

A. I would say so.

Q. You show on District 1 a More Thriftmart at Rosemead and Garvey. Did you personally inspect that store?

[fols. 2199-22] A. Yes. And it is not right on the corner either, at Rosemead and Garvey.

Q. In this District 2 you show another More's store at 8682 Garvey Boulevard, South San Gabriel.

A. This is the correct address here. They put it in there twice.

Q. They listed one of the More's twice?

A. Yes.

Q. I note that the More's store listed in District 1 at Rosemead and Garvey, if you will refer to District 1, Mr. Hayden, is listed as competing with Stores 55, 57 and 58, whereas the same store that is listed in District 2 is listed as competing with Store No. 29. Could you tell us which Von's store the More's actually does compete with?

A. Well, the More would compete with 55, 57, 58 and this 29.

Q. It would compete with all four of them?

A. Yes. And also that is wrong right there.

Q. What?

A. This side——

Q. It says "Complete Food Center."

A. But it isn't. They have no meat or produce.

Q. Now referring to District 3, and calling your attention to Murray Manor which we have previously discussed, what is Murray Manor?

A. To me it is just a name.

[fol. 2199-23] Q. What sort of an establishment do they conduct at Murray Manor?

A. Just a small center there.

Q. It is a shopping center, is it not?

A. They have several different shops in it, yes.

Q. Several different shops but no grocery store in it?

A. No.

Q. It is really a shopping center that doesn't have a grocery store in it, isn't it?

A. They have a barbershop, laundromats, a lot of small stores.

Q. A lot of small shops but no food stores?

A. I don't believe so.

Q. Yet you list Murray Manor as competing with Von's Stores 26, 33 and 63.

A. Well, it is still a shop that would have the hardware items in it.

Q. A hardware store?

A. When I say "hardware," like Johnson's Wax.

Q. Which store in the Murray Manor would be selling Johnson's Wax?

A. I think it is the Murray Manor itself.

Q. Aren't there a number of separate stores in Murray Manor?

A. Yes.

Q. So which one of the stores in Murray Manor would be [fol. 2199-24] handling Johnson?

A. The one that is the discount. The other little stores go under their own names.

Q. There is a discount hardware store in Murray Manor, is there not?

A. Yes.

Q. Do they sell appliances in Murray Manor?

A. Appliances, yes.

Mr. Coyle: Would you mark these pictures as W. D. Hayden Exhibits 3 and 4 for Identification, please, 3 being the picture of the fence and sign at the Murray Manor Shopping Center, and 4 being a picture of the parking lot and building at Murray Manor Shopping Center.

The Witness: You know, a place like this would be in competition with our department store, in which we sell patio furniture, hardware items of all kinds too.

(The photographs referred to were marked by the notary public as W. D. Hayden Exhibits 3 and 4, respectively, for Identification and returned to counsel for the plaintiff.)

Mr. Coyle: Q. I will ask you if that last statement is what Mr. Alsup just told you.

A. No.

Mr. Alsup: As long as you raised my name, did you just ask me if this were not a proper matter for you to mention?

The Witness: That's right.

[fol. 2199-25] Mr. Alsup: And I said, "You are the witness."

I also say, Mr. Coyle, if you have any other question I will be glad to answer it, or Mr. Hughes, who suggested the question.

The Witness: This is in between two of our stores.

Mr. Vaughan: We are going to have one of these incidents per deposition.

Mr. Coyle: Q. I show you W. D. Hayden Exhibit No. 3 for Identification and ask you if you can tell me what you see on that picture.

A. Murray Manor Shopping Center.

Q. Is that the fence out there, or the wall?

A. That is the end of the building there.

Q. And does it describe it as a discount shopping center?

A. That is what it says there.

Q. I show you W. D. Hayden Exhibit No. 4 for Identification and ask you if that is a picture of the Murray Manor Shopping Center and parking lot?

A. Right.

Q. Are there any other shopping centers in the Los Angeles metropolitan area that sell Johnson's Wax but don't have a grocery store in them?

A. That is the way Zody's are. They sell a lot of drug and wax items but they don't have a grocery department in them.

[fol. 2199-26] Q. Do you purport in this appendix to list every shopping center that sells Johnson's Wax and drug items in the Los Angeles metropolitan area?

A. Not every one, no.

Q. Just some of them?

A. Well, like the ones that have the big discounts.

Q. The ones that sell them at discount prices?

A. Yes.

Q. Regardless of whether they have a grocery store in them or not you are listing them?

A. Yes. That is why Zody's is listed all the way through there, you will notice.

Q. That may be why the Fedco is listed in Lakewood and Van Nuys. Is that why the Fedco is listed in Van Nuys and Lakewood, because they sell Johnson's Wax and items like that?

A. I would say so.

Q. But they don't sell groceries?

A. Right.

Q. Now referring to District No. 4 and calling your attention to the Fedco listed for La Cienega in Los Angeles, does this Fedco sell packaged cereal?

A. If it is listed there as a complete food center I would say "Yes."

Q. How big a grocery department does this Fedco have?

A. Well, this is a large store.

[fol. 2199-27] Q. How large a store would the whole establishment be?

A. The whole thing?

Q. Yes. In square feet.

A. Probably over 100,000 square feet.

Q. And then the food part of it, how many feet would that have?

A. I don't know.

Q. Would over 90 per cent of its sales consist of fresh meats?

A. I wouldn't know that.

Q. Is it predominantly a meat market?

A. I don't know.

Q. Have you inspected it?

A. No, I haven't been in that one.

Q. Does it handle produce?

A. That I don't know. This is the one that they have turned into a complete food center.

Q. Now referring to District 2, to the Giant-Mart in District 2, did you inspect that store yourself?

A. That is in Alhambra?

Q. Yes.

A. Yes. And the name isn't Giant-Mart any more.

Q. Was it ever?

A. It was to start out with. That is what they had on the billboard.

[fol. 2199-28] Q. Was it ever operated as Giant-Mart?

A. No.

Q. When was it opened?

A. I don't believe it is over three months ago.

Q. Is it a Unimart?

A. It is a Unimart now.

Q. Is it operated by Food Giant?

A. Yes.

Q. Now referring to District No. 1, the White Front store in Covina, did you inspect that store?

A. Yes.

Q. When did you inspect it?

A. About a month ago.

Q. You didn't inspect it as part of the study last September?

A. At that time—The White Front store?

Q. Yes.

A. Yes, I checked it in September.

Q. In September as well as now?

A. Yes.

Q. Have there been any changes since September?

A. Yes. The food center has been added to it. The market wasn't in there at that time.

Q. You list it in your appendix as having a complete food center.

A. That is through what was scheduled for it as a complete food center.

Q. It hadn't been completed but you didn't make a notation that it hadn't been completed on your appendix?

A. I just had it scheduled to be a complete food center.

Q. But you don't have that notation on your appendix?

A. No.

Q. Calling your attention to District 4, you noted that the Unimart was to be opened in January 1963 but you did not know that the White Front in Covina was to be opened. Are there any other stores on this list that were not in operation when you signed this affidavit which you haven't so noted?

A. No. I believe they are all in operation at this time.

Q. You believe every store on this list is in operation at this time, except the two that have closed?

A. Yes, that's right.

Q. But you didn't know that one of the two had closed?

A. What?

Q. But you were unaware that one of the two stores had closed?

Mr. Alsup: I object to that. The witness has answered your prior question and you are now arguing with him.

Mr. Coyle: I am asking him the question.

Q. Were you aware that the Key Company store in Fullerton had closed?

A. I was talking about Burbank.

Q. You don't know whether the Key Company store in Fullerton has closed or not?

A. No, I don't.

Q. So the only store on this list that you know has closed is the Sure store in Burbank?

A. Yes.

Q. Now referring to the operation of grocery departments in these discount stores by major chains in the area, does Lucky have discount operations in two stores, one at La Puente and the other in Anaheim, that is the Gemco Stores?

A. Yes.

Q. They are operated by Lucky. And are the More Stores

in Covina, South San Gabriel, Reseda and Sepulveda and National operated by Thriftmart?

A. Yes.

Q. Are the Unimarts at Jefferson and Sepulveda, Pomona and Norwalk and Alhambra operated by Food Giant?

A. Yes.

Q. And is the Big Ben operated by Ralphs?

A. No. They just have the grocery in that, I believe.

Q. Yes, that is what I was referring to.

Mr. Alsop: What Big Ben are you referring to? There are other operators who operate Big Ben Stores.

Mr. Coyle: There is only one in this listing, Mr. Alsop. [fol. 2199-31] The Witness: That would be Torrance, the one I am talking about.

Mr. Coyle: The Big Ben in Torrance.

Q. Are the discount grocery concessions in the Cal Store in Lakewood and the Cal Store in Pomona operated by Mayfair?

A. Yes.

Q. And is the grocery department in the Leonard store at Garden Grove operated by Mayfair?

A. Yes.

Q. Referring to District 1 and calling your attention to the Golden Rule store in Rosemead, is that operated by Food Fair as a successor to Fox?

A. Yes.

Q. Referring to the Big "A" in Long Beach, District 3, Page 2, is that operated by Food Fair as the successor to Fox?

A. No. That is a local company. That is a different company.

Q. Your study or survey indicates that the store is not operated by Food Fair, the successor of Fox Markets?

A. Which store is that?

Q. The food center in the Big "A" store in Long Beach.

A. That is a different operation altogether. That is Foods Company and this is Food Fair.

Q. I understand that. It is your testimony that Foods [fol. 2199-32] Company operates this Big "A" in Long Beach rather than Food Fair.

A. Yes.

Q. How many grocery stores do the Foods Company operate?

A. Well, I really don't know the exact number. But I think it is 12.

Q. Are they all in discount centers?

A. No.

Q. How many of them are in discount centers?

A. I believe there are two.

Q. Two in discount centers and to your knowledge ten are not in discount centers.

A. No, I think they have 12 of their regular stores and two discount stores.

Q. How long have they been a chain, this Foods Company?

A. I really don't know.

Q. Several years?

A. Yes.

Q. And they were operating conventional stores prior to the time they went into discount center operations?

A. Yes.

Q. Now referring to Fantastic Food Fair at Burbank—

Mr. Alsup: What page?

Mr. Coyle: District 6.

[fol. 2199-33] Q. Is that operated by Food Fair?

A. I don't know.

Q. Who operates that?

A. I don't know.

Mr. Coyle: I ask that this photograph be identified as W. D. Hayden Exhibit 5, it being a picture of the Build 'n Save premises in Fullerton.

(The photograph referred to was marked by the notary public as W. D. Hayden Exhibit 5 for Identification and was returned to counsel for the plaintiff.)

Mr. Alsup: What page is that on? It states on the back that this is formerly Key Co.

Mr. Coyle: This is my understanding.

Q. I show you W. D. Hayden Exhibit No. 5 for Identification and ask you if this is a picture of the building which

you identified in District 3 as the Key Company discount house.

A. Pretty hard to say.

Q. Are you unable to state whether or not that is the picture of the premises which you have listed as housing the Key Company discount operation?

A. I can't say.

Q. Now turning to District 1, I believe we discussed the White Front operation in Covina which had not opened when you made your affidavit but has subsequently opened and which you inspected last week. Does the White Front [fol. 2199-34] store out there in Covina handle a line of applicanes?

A. Yes.

Q. Does it handle soft goods?

A. Yes.

Q. Are the appliances and soft goods sold in the same building?

A. They are in the same building under the same roof.

Q. Is the grocery store under the same roof?

A. It is to one side, the grocery store.

Q. It is a separate building?

A. A separate building.

Q. Are any of the Von's and Shopping Bag Stores located adjacent to stores which sell appliances and soft goods?

A. In different shopping centers, yes.

Q. You share a common parking lot, just as the White Front store which is operated by Bill's Ranch Market out in Covina shares the same parking lot as the White Front appliance store which is in a different building?

A. Yes.

Q. In District No. 2 you list a Serv Mart in Pico Rivera listed as a complete food center. Did you inspect this store yourself?

A. Yes. I got thrown out. I always remember that one.

Q. How big a meat counter do they have in there, in the [fol. 2199-35] grocery establishment?

A. The way I remember it it wasn't too large.

Q. Did they sell fresh meats there?

A. Yes, they did. On the opening. I don't know whether they are selling it today or not.

Q. Have your people reported as to whether they are selling fresh meats or not?

A. Not in the last few months they haven't reported one way or the other.

Q. You don't know whether they are selling fresh meats or not?

A. They did at the time I made this up in September.

Q. September?

A. When they opened.

Q. When did they open?

A. They have been open a couple of years.

Q. What about last September, were they selling fresh meat when this survey was made?

A. That I can't answer you.

Q. Were they reported to you by your people as selling fresh meats?

A. Yes.

Q. Now referring to District 3, ABC Union Store in Santa Ana, you listed them as selling no meat, produce or dairy. Last September when this was drawn up were they selling package cereals?

[fol. 2199-36] A. Yes.

Q. Were they selling a line of dry groceries there?

A. Yes.

Q. Selling canned goods there?

A. Canned goods.

Q. Referring to the Fed Mart store in Anaheim, were they selling meats last September?

A. The report turned into me that they were a complete food center.

Q. Including a meat department and produce department?

A. If you will notice, the discounts are changing every day.

Q. Are they dropping meat departments in most of them?

A. I didn't say most of them.

Q. But some of them are dropping the meat department?

A. They are having their troubles.

Q. Are they having troubles?

A. Yes.

Q. It is a pretty tough row to hoe to sell groceries in a discount store.

A. It is pretty tough to sell groceries anywhere.

Q. It is harder in a discount store to sell fresh meats, isn't it?

A. I would think so.

Q. This White Front store in Anaheim, has that ever been completed?

[fol. 2199-37] A. I really don't know on that.

Q. You don't know whether it is selling meat, produce or dairy products?

A. No, I don't.

Q. The last reports you had, what were they selling at that White Front in Anaheim?

A. Just what is on there, that their complete food center was under construction but I don't know whether it has ever been finished or not.

Q. You don't know that they are selling any food products out there now, do you?

A. That's right.

Q. Referring to the White Front in Torrance, District 4, you say it opened January 1963. Have they ever opened?

A. Yes, they are open now.

Q. You know they are open?

A. Yes.

Q. Do you know what they are selling in that store?

A. Regular run of merchandise like in their other White Front stores.

Q. What do the other White Front stores sell?

A. Appliances, soft goods, grocery items.

Q. How much meat are they selling out there?

A. It would be hard for me to say.

Q. Do they have a meat department?

A. They have a meat department just like the one on [fol. 2199-38] Arrow Highway—or Azusa.

Q. Do they have a meat department like you have in your Von's-Shopping Bag Stores?

A. Like what we have?

Q. Yes.

A. It is a probably a little smaller.

Q. Do they have a produce department?

A. Yes.

Q. Do you know that they are selling fresh vegetables out there in the White Front store in Torrance?

A. Yes.

(A short recess was taken.)

Mr. Coyle: Q. Mr. Hayden, did you visit any stores on this appendix which are not located in either Los Angeles or Orange Counties?

A. I believe they are all Orange County or Los Angeles.

Q. What is the annual gross sales figure for the largest selling store in the Von's-Shopping Bag chain?

A. The largest?

Q. Yes.

A. In Los Angeles County?

Q. Or Orange County. Which of your stores has the largest annual sales?

A. In Los Angeles or Orange County?

Q. Yes.

A. It would be the Alhambra store.

[foi. 2199-39] Q. What are its annual sales?

Mr. Alsop: Which Alhambra store?

The Witness: It's on Valley. The number of the store is 29.

Mr. Coyle: Q. What are its annual sales?

A. It would be about \$100,000 a week.

Q. That would be between five and six million dollars annually?

A. That would be right, yes.

Q. Do you know of any discount store in the area which would have sales of groceries and related products of that magnitude?

A. Gee, I wouldn't know.

Q. Most of them would not, would they?

A. I just wouldn't know. You hear all kinds of rumors but I don't know.

Q. Rumor and speculation is all you know?

A. Yes.

Q. You personally have no knowledge whether these discount stores have very much annual dollar sales in groceries and related products?

A. You mean seeing their books?

Q. Yes.

A. No, I have never seen any figures.

Q. Von's and Shopping Bag's annual sales have expanded greatly in the past two or three years, haven't they? [fol. 2199-40] A. Well, not too great.

Q. They have expanded by thirty or forty million dollars since 1960, haven't they?

A. I don't remember what we did last year but I don't think it is that much.

Mr. Coyle: I have no further questions.

Cross-examination.

By Mr. Alsup:

Q. Mr. Hayden, you were asked if to your knowledge any of the discount stores had sales of groceries and related products amounting to \$5,000,000 a year and you said you didn't know; is that correct?

A. That's right.

Q. Do you know if there are a large number of stores classified as grocery stores which have annual sales of groceries and related products of less than \$100,000 a year?

A. What was the question again?

(The reporter read the pending question.)

Mr. Alsup: Q. I am referring to mom and pop.

A. Yes, there are more of those than the other.

Q. You were asked about this White Front store in Torrance and you were asked how much meat they are selling. You said that in your opinion that they are perhaps not selling as much meat as Von's and Shopping Bag Stores, [fol. 2199-41] that is fresh meat. Do you recall that?

A. Yes.

Q. Are there a large number of other grocery stores in the Los Angeles metropolitan area which have lesser sales of fresh meat than Von's and Shopping Bag Stores?

A. Yes, there is.

Q. Or less sales of fresh meat than stores of many single store operators?

A. Very true.

Mr. Coyle: You are leading the witness a little bit, Mr. Alsup.

Mr. Alsup: Q. To your knowledge are there any so-called mom and pop stores which do not sell fresh meat?

Mr. Coyle: You are still leading him.

Mr. Alsup: I don't agree with you.

The Witness: I don't know of any offhand but I imagine there is a lot of them.

Mr. Alsup: Q. How about Speedee Marts, have you been in any of those bantam stores?

A. I have only been in the one that is up close to my home.

Q. Can you tell me whether all of the stores of Von's, and that includes the Shopping Bag Stores, sell liquor?

A. All of Shopping Bags have liquor in them but I don't believe all of Von's do.

Q. Are there other chains in this area which do not carry [fol. 2199-42] liquor?

A. Well, Ralphs, they are just getting into the liquor business, and Safeway the same way.

Q. Do you know whether all of the mom and pop stores carry liquor?

A. I think most of them would have just beer and wine, not liquor.

Q. You were asked to see the exhibit marked W. D. Hayden No. 3 for Identification which purports to be a photograph of Murray Manor in Anaheim. Do you notice a liquor sign in front of that store?

A. Yes, I notice that.

Q. Did the Von's Stores, Stores 26, 33 and 63 carry liquor, to your knowledge?

A. Yes.

Q. I think you referred to the Shopping Bag Store soft goods line. Is that what you call your junior department store items?

A. We call them just department store, non-food section.

Q. What do these stores sell?

A. Well, just about anything you can buy at a Sears & Roebuck. So you know what that covers.

Q. Will you list some of the items?

A. Well, we have the soft goods, we have shoes, we have children's clothes, we have paint, we have tools, we have a [fol. 2199-43] glass section.

Q. How many of the stores have such departments of the Shopping Bag Stores?

A. Well, I think there are 23.

Q. To your knowledge does the average grocery store, including the mom and pops doing business in this area, carry such items?

A. No, I don't think the average store would have it. Because we have patio furniture in those, which are listed as barbecues.

Q. I think you have testified, Mr. Hayden, that you feel the Von's Stores can draw up to five miles. Do you have any opinion as to the radius of the area from which your average store draws the larger percentage of its customers?

A. Well, I don't think you could plan on more than two miles.

Q. Do you have any idea what percentage of your customers of your average stores are drawn from this two-mile radius that you referred to?

A. What percentage in the two miles?

Q. Yes.

A. That is a hard figure to say. I just wouldn't know.

Q. Prior to the merger of Von's and Shopping Bag, Mr. Hayden, how many stores did you have located in the City of San Marino on Huntington Boulevard?

A. We have two stores.

[fol. 2199-44] Q. Those were Shopping Bag Stores; is that right?

A. Correct.

Q. How far apart are they located?

A. I would say it is less than a mile and a half.

Mr. Alsop: No further questions.

Redirect examination.

By Mr. Coyle:

Q. Mr. Hayden, when you prepared this exhibit purporting to show which of your stores were competing with these various discount stores, you took a five-mile radius as your boundary of competition, did you not?

A. Yes.

Q. Now referring to W. D. Hayden Exhibit No. 5 for

Identification, which I understand is a picture of the premises formerly occupied by the Key Company, and which you understand now houses a hardware store known as Build 'n Save, I ask you again can you identify this picture?

Mr. Alsup: I am going to object on the ground that it has been asked and answered and he said he could not answer it.

Mr. Coyle: I just want to see if he can identify it.

The Witness: No, I can't.

Mr. Coyle: I have no more questions.

[fol. 2199-45] Recross-examination.

By Mr. Alsup:

Q. Mr. Hayden, based on your study of the industry do you have any opinion—

Mr. Coyle: There is no foundation for this. What study are we talking about?

Mr. Alsup: You referred to a study of the industry and his business experience.

Mr. Coyle: I referred to his survey.

Mr. Alsup: Q. Mr. Hayden, what trade journals, if any, do you read?

A. Supermarket News.

Q. Have you seen any articles dealing with the draw area of discount stores?

A. Yes. They have quite a few articles in them.

Q. Do you have any opinion as to the draw area of the discount store, a large discount store?

A. I think some of their studies they claim up to eight to ten miles, but I think five miles would be a better figure.

Q. Is that what you had in mind when you prepared this exhibit, Mr. Hayden?

Mr. Coyle: He has already answered that.

Mr. Alsup: I don't think he has.

The Witness: Yes.

Mr. Alsup: I have no further questions.

[fol. 2199-46] Redirect examination.

By Mr. Coyle:

Q. On your direct examination, Mr. Hayden, didn't you testify that when you prepared this affidavit with the attached appendix that you used the five-mile area because it was your understanding that the Von's Stores would draw five miles?

A. No. I think most of the draw is two miles for any food store.

Q. But they will draw to five miles and that is what you based this appendix on, is it not?

A. That is what I made the study on the discount stores.

Q. You based it on the five-mile draw of the Von's Stores?

A. Yes.

Mr. Coyle: No more questions.

Mr. Alsup: I have no more questions.

(It was stipulated by and between counsel that the foregoing deposition be signed before any notary public with the same force and effect as those read, corrected and signed in the presence of the notary public before whom it was taken.)

Subscribed and sworn to before me this — day of —, 196—.

Notary Public in and for the County of Los Angeles, State of California.

—, —, (Signature of the Witness).

[fol. 2199-47] STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, HAROLD M. LIEBOWITZ, C.S.R., a Notary Public within and for the County of Los Angeles and State of California, do hereby certify;

That prior to being examined, WILLIAM DELBERT HAYDEN, the witness named in the foregoing deposition, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken before me pursuant to oral stipulation, at the time and place therein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; that the said deposition is a true record of the testimony given by the witness;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness before any notary public in and for the County of Los Angeles, State of California.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal, this 4th day of June, 1963.

Harold W. Leibovitz, Notary Public in and for the County of Los Angeles, State of California.

[fol. 2199-48] DEFENDANTS' EXHIBIT BI

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60-C

[fol. 2199-49] AFFIDAVIT OF W. D. HAYDEN

County of Los Angeles, ss:

W. D. HAYDEN, being first duly sworn, does hereby depose and state as follows:

I am the Assistant Operations Manager of Von's Grocery Co.

In September and October, 1962, I was requested by T. A. Von der Ahe, President of Von's, to make a list of all discount houses which sold groceries and other food items in Los Angeles and Orange Counties. I obtained the information requested from all possible sources, including personal observation and newspaper advertisements. I also had each of Von's supervisors report to me the names, addresses and other pertinent information concerning discount houses with food departments in their respective districts. By piecing together all of the information so obtained, I developed a list of discount houses.

Thereafter, attorneys for Von's learned of the list I had prepared and asked me to sign an affidavit to which that list was attached for use in the trial of the case entitled United States v. Von's Grocery Co. I was later called upon to have my deposition taken by counsel for the Government in that case. During the course of that deposition it became apparent to me that the list that I had developed contained some errors. Therefore after my deposition was completed and during the latter part of May and early part of June, [fol. 2199-50] 1963 I personally visited each discount house on which I had any information and corrected the list which I had previously prepared based upon my personal observation of those discount houses and their operations. I then prepared a new list, a copy of which is Exhibit AR. There are 37 discount houses with food departments named on that list. Each of the discount houses which I have listed has a grocery department and as indicated on the list many of them also sell meat and produce. If a discount store is described as having a complete food center it means

that it sells groceries, meat, produce and other products customarily offered for sale in grocery stores.

Each of the discount houses which I have listed is sufficiently close to at least one and usually several Von's stores to be in competition with them. On Exhibit AR, the discount houses named are listed by Von's supervisorial districts. The name and address of each discount house is set forth on the left hand side of the list, together with information concerning the type of food products sold at each outlet, whether the discount house is restricted to members only and the name of the operator of the food department (shown in parentheses) where that operator also operates conventional supermarkets.

On the right hand side of the list are the numbers and addresses of the Von's stores which are near the discount houses listed and in competition with them.

[fol. 2199-51] In addition, I procured an map of Los Angeles and Orange Counties on which each Von's store is located by a purple dot. I have pasted on this map stickers which show the name and location of each of the discount houses with food departments which are named on the above referred to list. These discount houses are also indicated by green dots if they have complete food centers and blue dots if they sell less than all the products usually found in grocery stores. This map is Exhibit AQ.

The attached list and the map referred to above show that Von's faces competition in many areas from discount food outlets. I know from my own observations and experience that the sale of food products in discount houses is a relatively new form of grocery retailing and that most of the discount houses which I have listed commenced operations after the merger of Von's and Shopping Bag, thus providing a new form and kind of competition both to Von's and other conventional retail grocery concerns in the Los Angeles metropolitan area.

W. D. HAYDEN.

Subscribed and sworn to before me, this 10 day of June, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seals.].

My Commission Expires June 22, 1963.

DEFENDANTS' EXHIBIT AX

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

AFFIDAVITS OF DEFENDANT'S INDUSTRY WITNESSES WHO
OPERATE ONE GROCERY STORE

.

AFFIDAVIT OF W. H. CRAWFORD

STATE OF CALIFORNIA,
County of Los Angeles, ss:

W. H. CRAWFORD, being first duly sworn, does hereby depose and state as follows:

I am the President of Modern Village Stores, Inc., which operates a grocery store and junior department store at 11850 Valley Boulevard, El Monte, California. Modern Village Stores, inc. also operates a junior department store in Monterey Park.

Our El Monte store began as a grocery store and has always featured groceries despite the fact that we sell a large number of non-food products as well. The area devoted to food sales is equivalent to that of a good sized super-market.

I started in the grocery business in Los Angeles in 1933. In 1938, I acquired the El Monte location which Modern Village Stores still operates.

In 1957 and 1958, I served as President of the National Association of Retail Grocers of the United States (NARGUS), and I am still a member of that association's Board of Directors. In September, 1960, I was elected President of the California Grocers Association, a position I held for approximately one year. In recent months, illness has required me to give up many of my association activities, and I have for the same reason turned over most of my duties at Modern Village Stores to my son, Ray.

At the present time, there are a number of grocery stores run by both chains and independents and at least 3 discount houses with food departments in the vicinity of our El

Monte store. Directly across the street from us is a modern Market Basket. A large Food Giant store is located in a comparatively new shopping center less than a mile away. A Shopping Bag store is about a half mile away. I have often been asked if I could compete successfully against this sort of competition. My answer is and always has been that the question is not whether I can compete against them, but whether they can compete against me. I am sure that my store has always been the leading and most successful store in its vicinity. I am sure that my sales volume exceeds that of my competitors.

This has been accomplished through hard work and aggressive merchandising and by exploiting the advantages I have over my competitors. A chain is, by its very nature, less efficient and more cumbersome to operate than a well-managed store owned by an independent. I am sure that I can move faster to meet local conditions and that with one store, I am more efficient than any of my chain competitors.

In addition, I am better known in the community than the chains. I have taken an active part in community affairs, and I have spent a great deal of time getting to know my customers personally. Prior to my illness, one could almost always find me in one aisle of my store and my son in another. We nod to people, stop and chat with others answer any question any customer may have. People appreciate this personal touch, and they come back for more.

I have also chosen my employees carefully, and on the whole, I seem to be able to get better personnel than the chains. I continually stress to my employees the necessity of extending courteous, friendly service.

We are almost always involved in some promotional activity or another. We advertise weekly in local media. Admittedly, we do not and could not profitably advertise in metropolitan newspapers as the chains do, but I think that the advertising we have is just as effective, if not more so. For example, our store serves a large Mexican community. We often run ads in both English and Spanish in order to because a large chain has to adapt its advertising to the attract this trade. This is something a chain could never do metropolitan area as a whole, while we concentrate on a single community.

Modern Village Stores, Inc. is a member of Spartan Grocers, a subsidiary of Certified Grocers of California, Ltd. Through Spartan we can buy groceries on terms comparable to the chains. I believe that cooperative buying is the single most important factor in the success of most independent grocers in Los Angeles.

I am aware that some independents have not developed successful businesses, but I do not believe that this is a result of any competitive disadvantage which befalls the independent. In my judgment, any single store operator who has the requisite experience and who is willing to work can compete with chains or anyone else and will develop a profitable business. Unfortunately, there are grocers who are inexperienced or lazy or both. Their chances of success are not very good.

Prior to 1960, NARGUS passed a resolution condemning all mergers in the retail grocery field which substantially lessened competition or tend to create a monopoly. I am in wholehearted agreement with the letter and spirit of that resolution, and I supported it at the time of its adoption. But I am firmly of the view that the Von's-Shopping Bag merger is not such a merger. I cannot see how it could possibly affect competition adversely, and so far as I can tell, it has not. By the same token, I cannot foresee any possibility that the grocery business in Los Angeles will become dominated by chains. Certainly, the merger of Von's and Shopping Bag does not raise any fear of such domination.

W. H. Crawford.

Subscribed and sworn to before me, this 24th day of December, 1962.

Juanita J. Lovin, Notary Public in and for said County and State, [Seal.]

My Commission Expires Dec. 19, 1965

STATE OF CALIFORNIA,
County of Los Angeles, ss:

AFFIDAVIT OF J. R. DAHL

J. R. DAHL, being first duly sworn, does hereby depose and state as follows

I am the owner and operator of the Arrow Market located at 8315 Santa Monica Boulevard in Hollywood. From 1957 to 1959, I was President of the Southern California Grocers Association, and I presently serve as that organization's Treasurer. Since 1957 I have been a member of the Board of Directors of the California Grocer's Association, and I am a member of the Board of Directors of Certified Grocers of California, Ltd. I am also an active member of the National Association of Retail Grocers of the United States (NARGUS).

My father and uncle operated a general store in Albert Lea, Minnesota, and so I more or less grew up in the grocery business. However, after graduation from college, I became the principal of a small high school in Montana. Later I went to work in Fresno, California for Rosenberg & Company, the world's largest dried fruit packers.

In 1927, I applied for a job with the then newly-formed Safeway chain in Los Angeles. I managed a Safeway store in the South Bay area of Los Angeles for 2½ years and was then transferred to El Paso, Texas.

Thereafter, I decided I wanted to return to Southern California, so I left my job with Safeway, sold some stock I owned in the company, and with the proceeds started a small store in Paramount, California.

In 1935, I sold that store and bought the Sunfax Market at the corner of Sunset and Fairfax in Hollywood. In 1938, I sold the Sunfax Market. Thereafter, I managed two stores for Carl's Ranch Markets, then a four store chain. In 1943, I purchased the Arrow Market, which I have operated ever since. The Arrow Market is considerably smaller than the average conventional supermarket, although we are now planning to remodel and expand the market. The building in which the Arrow Market is located is approximately thirty-five years old, and perhaps its principal drawback as a grocery store is the limited parking avail-

able. The small parking lot immediately next to the market can hold only 24 cars.

Despite the foregoing, the Arrow Market has been successful. My sales per square foot per week are nearly twice the national average for supermarkets. The success of my business may be attributed to many factors, including a good deal of hard work, but there are two principal factors leading to my success which stand out in my mind.

The first is my membership in Certified Grocers. Unless I was affiliated with a strong cooperative buying association such as Certified, I would have a distinct disadvantage as compared to chain stores in the prices for which I could purchase groceries. My membership in Certified, however, permits me to buy at prices which are as low as the prices offered by suppliers to direct-buying chains, since Certified buys in the same quantities and obtains for its members the same advantages of quantity buying and central warehousing as in the case of the chains.

The second main reason for my success is the personal relationship I have developed with the community and the customers I serve. It has always been my theory that if a small grocer takes an active interest in the people he serves and the community in which he does business, he will attract a good number of loyal customers. As a consequence, I have tried to make my store more than just a place in which to buy groceries. I have tried to make it a center of community affairs and a place people like to go. I have done this primarily because I have enjoyed doing it, and there is no doubt that it has enriched my life, but it has also contributed significantly to the success of my business. My employees are always friendly and polite. I, myself, spend time chatting with people in my store, becoming personally friendly with them. I live within a block and a half of my store, and I walk to and from work. I am known in the community.

I have installed a bulletin board in my store on which anyone can post any sort of notice without any charge. I always mail out various materials to my customers each week.

In addition, I am active in community affairs, where I have made innumerable friends and customers. I am currently President-elect for the year 1963 of the West Holly-

wood Kiwanis Club, a position I also held in 1955. I am the Director of Rehabilitation for the Kiwanis Crippled Children's Foundation. I have been active in the YMCA, the Boy Scouts, the Community Chest, the Red Cross, and for many years I have served on the Board of Directors of the West Hollywood Chamber of Commerce.

The personal contacts I have with my customers and my community have given me a tremendous advantage over my competition. A chain store, for example, cannot possibly become as closely allied with the community as I can, and a chain store manager simply does not have the opportunity to develop the close personal ties which I have with my customers and the community as a whole.

In addition to the foregoing, my success has also been contributed to by other factors, such as my knowledge and experience in the grocery business and the fact that I am right on hand to supervise personally my employees and to watch my costs.

In 1958, I was interviewed by a representative of Food Topics Magazine who asked me what opportunities were available to the single-store operator in Los Angeles. I replied in substance, "We've never had it so good. There's never been a time such as today when a medium-sized supermarket—in the \$1,000,000 to \$1,500,000 [sales] bracket—could make so much money." Food Topics chose to quote my remarks in an article concerning the grocery business in Los Angeles which appeared in that magazine. What I said then accurately stated my opinion, and I am of the same view today. I still feel that a single-store operator can compete successfully and make a good profit in Los Angeles.

I do not think that the merger of Von's and Shopping Bag in 1960 affected the competitive opportunity of single-store operators or other small concerns in any way. The grocery business has always been keenly competitive in Los Angeles, and the merger has not lessened that competition or its intensity. It has not placed small operators at any competitive disadvantage so far as I can see. Furthermore, I am of the opinion that the existence of small concerns and the likelihood that they will prosper and grow in number

precludes any possibility of this market becoming dominated by a few large concerns.

J. R. Dahl.

Subscribed and Sworn to before me, this 6th day of Nov., 1962.

Elaine R. Klas, Notary Public in and for said County and State, [Seal.]

My Commission Expires August 13, 1965

AFFIDAVIT OF CECIL W. DOBSON

STATE OF CALIFORNIA,

County of Los Angeles, ss:

CECIL W. DOBSON, being first duly sworn, deposes and states as follows:

I am the President and principal stockholder of Dobson's Market, a corporation, which owns and operates Dobson's Market, a grocery store located at 4305 Degnan Boulevard, Los Angeles, in the Leimert Park area, near the Crenshaw Shopping Center.

I have had more than 30 years experience in the meat and grocery business in Los Angeles. I acquired my present store at 4305 Degnan Boulevard just about three years ago. At that time I was aware of the plan of Von's and Shopping Bag to merge and this did not deter me in the least from opening up my present store. As a matter of fact were and are newer and bigger stores of various chains, in the shopping area in which my store is located there and I knew I could compete and in fact have competed very successfully with them. I think I have a competitive advantage over all of them. I refer to the following supermarkets, all of which are located in what is generally known as the Crenshaw shopping district:

1. The Von's store at Santa Barbara and Crenshaw;
2. The Daylite store on Santa Barbara just a block or so west of the Von's store;

3. The Safeway store at 39th and Crenshaw;
4. The Boys store at Rodeo and Crenshaw;
5. The Ralphs store at Rodeo and Crenshaw.

There is also a Fox Market at 57th and Crenshaw and there are a number of liquor stores and drug stores in the area which, of course, sell many of the same products which are sold in my store.

I believe it is worth noting that the experienced single store operator who makes an effort to give personalized service to his customers has a great competitive advantage over the employee-operated store of any chain. Labor relations and being on top of the situation are the biggest factors in the operation of any store, and the individual operator has a great advantage in this respect. In my meat department, for example, I have four men who have worked for me for more than 20 years. I have taught them the business. I feature top quality meats and we render personal service to each customer. From my years of experience and my personal acquaintance with the meat packers, I know that I can purchase my meat at prices equal to those paid by the large chains and I get just as good or better quality at all times. Moreover, I can make a larger profit on meat than any of the chains because of my greater efficiency in cutting the meat. I estimate that because of my cutting proficiency and that of the men I have referred to we get from 4- to 5% more saleable meat than the chains do.

The same is true in produce also. My produce buyer is Japanese and he really knows quality produce. He goes to the produce market at 4:30 A.M. every day and he purchases only the select merchandise so that there is no waste through spoilage. The large chain, buying in large quantities, cannot be so selective and it necessarily gets some produce it cannot sell. By buying at the right time I am certain we do just as well if not better in price on our produce purchases as any chain, and much better on quality overall. We feature top quality produce and as a consequence our produce business has increased by 50% in the last year.

With respect to hard produce, such as potatoes, it may be that the large chains buying directly in carload lots can purchase at a somewhat better price than individual opera-

tors pay buying on the local produce market, but at the same time there is no doubt that those who buy in smaller quantities on the local market can be more selective as to quality, so there is no advantage to the large chain in this respect.

I am a member of Orange Empire Co-op and I get my groceries at just as good a price as any direct buying chain. I get all the advantages of advertising allowances and buying discounts that any large direct buying chain does.

I have stated that any individual operator who concentrates on personalized service and good relations with his employees can compete successfully with any chain store and do very well in the grocery business. My own store is a good example of the accuracy of this statement. Thriftmart had the lease on my store for ten years but it was not a profitable store for Thriftmart and it did not renew its lease when it expired. I believe Thriftmart never did as much as \$1 million gross business at this store. Compare this with the \$2 million gross which I did in the store last year.

After Thriftmart gave up the store, Patton's Markets took it over and for awhile did a good business by running a lot of hot ads. However, Patton's did not have the personal touch and the store was not successful under that management. Patton's sold the lease to a man named Ransom. Ransom was not a good merchandiser and was not successful, and so he sold to me. Naturally I take pride in the great success I have made of the store. I know that any individual operator with know-how who has good labor relations and is on top of the situation at all times can have similar success, and there are very many similarly successful individual operators in this area competing very effectively against stores of chains.

I have read the statements of the proposed government witnesses. I refer to the statements of Messrs. Bynum, Carpenter, Dick, Gertmenian, Irvine, Ledgerwood, Logue, Mekjian, Palmer and Swerdlick. All of these statements are virtually identical and I do not agree with any of them. I believe that the larger a chain gets the more difficulty it has in labor relations, in finding competent employees and in controlling individual store operations and the more vulnerable it becomes to the competition of individual opera-

tors like myself. The merger of Von's and Shopping Bag could not possibly have injured any individual operator and it certainly has not lessened competition in the slightest. I believe it is utter nonsense to think there is any danger that a few large chains will ever dominate this market. There are thousands of strong individual operators, small chains and larger chains doing business in Los Angeles and Orange County and based on my own long experience in the business I am sure there always will be. Competition in the grocery business is on a store-by-store basis and any aggressive and able operator like myself can out-compete the store of any of the chains because of personalized service, better labor relations, and being in personal charge of the store and seeing that it is run properly. The merger gave Von's no competitive advantage at all and it is impossible for any chain or group of chains to control this market.

Cecil W. Dobson.

Subscribed and sworn to before me this 8th day of February, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF REYNOLD ELKIN

STATE OF CALIFORNIA,

County of Los Angeles, ss:

REYNOLD ELKIN, being first duly sworn, does hereby depose and state as follows:

William Tuckman and I are the sole stockholders of Penny Food Mart, Inc., which operates a grocery store at 935 North LaBrea Avenue, Inglewood, Los Angeles County, California. Mr. Tuckman and I formed our corporation in 1958. Since that time, I have been primarily responsible for the operation of our grocery business.

I have been in the grocery business in Los Angeles since

1939, when at the age of 13 I began working as a clerk in a market operated by Beach Grocery Co. In 1941, I was employed by Von's Grocery Co. and ultimately became an assistant store manager and relief manager for that company. I remained with Von's until 1951 (except for 3 years service in the Navy). I was hired in 1951 to manage the Fairway Market in Monterey Park. Three or four months later, that market was acquired by Raisin Markets. I stayed on and worked with Raisin Markets in a supervisory and buying capacity until 1958 when Mr. Tuckman and I formed our corporation and acquired our present market.

Mr. Tuckman also has had a number of years experience in the grocery business.

The store which we acquired and which we still operate is located directly across the street from a large Safeway supermarket which in 1958 was only about two years old. Our store is located in a building which is more than 40 years old. When we acquired our store and on many occasions since then, I have been reminded of something I learned from Wilfred Von der Ahe, now Executive Vice President of Von's, when I worked for that company. At the time to which I am referring, Von's had only 7 or 8 stores, and we learned that Safeway was about to open a new store right next door to one of Von's. When he learned of this, Will said, "The best place for a Safeway store is right next door to us." He was confident that Von's could out-compete this large chain store and that Von's could take trade away from it. He was right, and his axiom is just as true today as ever. Since we opened our store in 1958, our sales volume has increased by more than 400%. We have out-competed Safeway as well as the other markets in our area. There is a Von's store $\frac{1}{2}$ mile away, a Thriftmart $\frac{1}{2}$ mile away and a Fox market 1 mile away, as well as a few other independents. I wonder how much better we would have done if all of these stores were next door to us.

Our success can be attributed to the fact that we have exploited the natural advantages which *any* independent holds over *any* chain store. Will and Ted Von der Ahe are good grocerymen. So are Neal Ramsey (President of Market Basket), Robert Laverty (President of Thriftmart) and other chain executives, but they are not in their stores.

I am. I can personally oversee every aspect of my business. I can keep my store clean. I can create a personal, friendly relationship with my customers. I can provide them with service. I know my customers, not only in the sense that I can greet them, but in the sense that I know what they want, what they will pay for any given product and what appeals to them. In addition, my ability to make changes to take advantage of local competitive conditions is much greater than in the case of chain stores. I can walk across the street to Safeway, look around their store, see what they are doing wrong and where their operation is vulnerable, come back to my store and immediately institute changes which will take advantage of Safeway's weak spots.

Contrast my operation with the operation of a chain store such as Safeway. First of all, the store is run by an employee of Safeway. He does not have an ownership interest in the business, and it has been my experience that somehow a manager, no matter how good he is, is no substitute for an experienced and able independent who is operating his own business. The two are simply not motivated by the same considerations. Of equal if not greater importance is the fact that the chain store manager is not in charge of all aspects of his business. He has very little to say about what products will be sold in his store. He has almost nothing to do with the prices at which products are sold. He is also restricted by chain-wide merchandising policies. In order for him to institute the sort of change which I can make immediately, he must clear with the head office and then his proposed change may not be approved. Under these circumstances, I am confident that the independent has every opportunity to out-compete a chain, and that by taking advantage of these opportunities he is going to attract customers from the chain store.

One of the points I have mentioned above deserves further comment. I believe that the fact that chain stores must set a chain wide policy both in terms of the products they sell, the prices they charge and the merchandising methods they employ is a real and distinct disadvantage to them. This has been proven to me by my own experience. Approximately two years after we began operating our Inglewood store, we decided to try to branch out. We took

advantage of an opportunity that was made available to us to acquire the lease on a store in South Gate, which is also in Los Angeles County. We hired a manager to run that store, and we instituted policies which had been shown to be most successful in our Inglewood store. Our South Gate store was not as successful as we had hoped it would be. The reason was that the community which we served in South Gate did not want the same things as the community we served in Inglewood, and they responded to our policies in a wholly different way. We found that the people in South Gate wanted different products than the people in Inglewood. It had been our experience in Inglewood that price was of very little importance in attracting or holding customers. In South Gate, we found that the community we served was much more price conscious. Moreover, I was not able to spend a great deal of time in our South Gate store, and because I was not right on the job, I was not able to adapt our policy in South Gate to meet the needs and desires of that community, and while our store manager in South Gate was a capable, experienced man, it just wasn't the same as having the owner of the business on the premises, able to oversee every aspect of it and make the changes that were required. As a result, we did not renew our lease on the South Gate store, and I understand that it has since been leased to another independent merchant. Now if I had this problem with two stores, I imagine and I am sure that the chains must have the same problem, only more so, with a greater number of stores, and it is my belief that the larger a chain gets, the more aggravated this problem becomes and the greater become the opportunities for the independent to compete against chain stores.

I do not mean to leave the impression from my remarks that the success of our business has been easy. It has required hard work, careful attention and most of all, I do not think it could have been accomplished were it not for the fact that I knew the grocery business by reason of my experience as an employee of Von's and Raisin Markets. I know that there are a lot of independent grocers in Los Angeles who do not have that same experience, who do not have the requisite ability to run a grocery store, or who are unwilling to work as hard as is necessary to make a success of their business. For example, the man who operated our

present market prior to the time when we took over and run a clean, up-to-date market, and he did not do nearly as well as we have been able to do. I am sure that incompetence, inexperience and laziness have led to a lot of failures in the grocery business, and this goes for both large and small concerns. I am sure that these failures will continue in the future, but I am just as sure that an able, hard-working independent has got it made in Los Angeles and the opportunity for independents who know what they are doing is wide open.

Attorney's for Von's Grocery Co. have asked me to execute a document which purports to be the testimony of Adrian Bynum, who I am advised will be a witness for the government in the case which has been brought to question the legality of the merger of Von's and Shopping Centers. I note that in paragraph 4 of that statement, it is stated that only chains with triple A financial ratings can get desirable locations in shopping centers. At the present time and this seems to be the case. However, I would like to point out that not all successful supermarkets are in shopping centers, and while a shopping center location may be desirable, there are many, many locations outside of shopping centers which are just as desirable. I know, as a matter of fact, that the chains even today are opening stores outside of shopping centers in as great a number as those which are being opened in shopping centers and it is my opinion that there are locations available to independents outside of shopping centers which can provide them with a basis for a successful grocery operation. When the right time comes in the future, I am sure that we will be interested in expanding our business. We learned a good deal through our experience in South Gate, and I think that there will be a time when we will wish to expand by adding new locations. When that time comes, I am confident of being able to find locations for successful stores.

I note that in paragraph 6 of Mr. Bynum's statement it is stated that "single store operators and small chains do not have their own highly developed distribution system like the larger chains do. This is simply not the case. I am a member of the greatest purchasing and distribution organization in the world—Certified Grocers of California, Ltd. I am an independent who takes advantage of the services offered by the organization."

Certified or comparable cooperative buying groups such as Orange Empire Coop, can purchase groceries and get them on their shelves as cheaply as any chain. The fact that chains have their own distribution systems is evidence of the complexity of their business and the necessity for centralized control. It does not necessarily mean that chains have an advantage in these fields, and I am confident that they do not.

In paragraph 7 of Mr. Bynum's statement, it is stated that Certified does not handle dairy, meat and produce items. Nonetheless, it is my belief that I can do as well in purchasing those items as any chain. Mr. Bynum also points out that Von's belongs to a dairy cooperative known as Jersey Maid. I also know that Safeway owns its own dairy, and sells only Lucerne Milk which is produced by that dairy. I do not believe that this gives them any advantage. I deal with Foremost Dairies, which is many times larger than either Jersey Maid or Lucerne. Foremost has to sell its milk in competition with Jersey Maid and the Lucerne, and consequently, they are going to give me as great an opportunity to sell their products in my store as Von's and Safeway have in selling their dairy products in their stores.

Mr. Bynum also states that chains with their own distribution systems do not buy from Certified. I am confident that I can do and probably out-do the direct buying chains through my membership in Certified, just as I can do as much with the assistance of Foremost Dairies in the selling of dairy products as Safeway can do with Lucerne or Von's can do with Jersey Maid products.

In paragraph 12 of his statement, Mr. Bynum states that he has faced vigorous competition from Von's. So have I, and I have provided them with vigorous competition. As I said before, I only wish they were next door to me so that the customer would have the opportunity of a side by side comparison of my operation and Von's.

Finally, Mr. Bynum states in paragraph 14 of his statement that he believes that the merger of Von's and Shopping Bag "will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area." I could not disagree with him more. I do not

believe that the merger of Von's and Shopping Bag is in any way to the disadvantage of competition. In fact, I believe that that merger, in so far as it created a larger chain, enhanced the opportunity of independents to compete against Von's and Shopping Bag stores, and I do not see how that merger could have tended to create a monopoly in any conceivable way.

Reynold Elkin.

Subscribed and sworn to before me, this 11th day of January, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF JOSEPH B. GOLDBERG

STATE OF CALIFORNIA,

County of Los Angeles, ss:

JOSEPH B. GOLDBERG, being first duly sworn, deposes and states as follows:

I have been in the grocery business in the Los Angeles area since 1496 when, upon my release from the Army, I went to work as a produce buyer for King Cole, Inc. I had had no previous experience in the business. King Cole, Inc. was started in 1946 by my brother Leo A. Goldberg, Earl I. Swetow and Max Berick, each of whom had worked for Jim Dandy Markets Inc., and who decided to start their own business. By 1961 King Cole, Inc. had grown to a six-store chain which did a business of about \$12 million per year, and by that time I had become executive vice-president and general manager of the company. My brother Leo was President of the company.

In March 1961 my brother and Earl Swetow decided to retire from active supermarketing and enter the real estate field. They desired to sell their interests in the corporation and this paved the way for me and other executives and employees of the company to purchase the individual stores and operate our own separate businesses. I wish to make it

clear that the decision to break up King Cole was not because it was not doing well. Actually it was a very successful operation, but my brother felt he had made enough money to be comfortable and did not desire to continue in the business any longer.

As a result of the decision to split up the business I purchased the King Cole supermarket at 11203 East Washington Boulevard in Whittier. The unit at 2920 Los Feliz Boulevard, Los Angeles, was sold to P. T. Morse, who had been vice-president and liquor buyer for King Cole. The unit at 2511 Sunset Boulevard, Los Angeles, was sold to Sam Warner, who had been vice-president and director of store operations for King Cole. Sam Warner and some investors also bought the Glendale store at 1615 West Verdugo Avenue. The unit at 649 West Holt Street, Ontario, was sold to Ontario Foods Corp., which was organized by three King Cole supervisors named Stanley Able, James Exchnoz and Bernard Cinnamon. They were permitted to buy the store on a long-term basis with little down payment and they have done very well with the store. A newer unit at Lemon and D Street in Ontario was sold to Perry Burnside.

As for myself, I have been very successful. When I took over the Whittier store in March, 1961 it was doing a gross business of \$2.9 million per year, and in the first year under my ownership and operation the volume of the market boosted to a \$3½ million level and my profits also went up. I expect to do somewhat better than that figure in the coming year.

I was so confident of my ability to compete successfully that in August of 1961 I also took over the Anaheim unit which had been under construction for King Cole, Inc. at 300 North Beach Boulevard, Anaheim. I made a miscalculation on the Anaheim store. It was not a successful store and I have since closed it and it is now available for lease to some other operator. There are many things which account for the success or failure of a particular store and in part this store was not a success because I could not be present to give it my personal attention, and in part it was because there was not sufficient population in that area to support the store and I did not have sufficient capitalization to wait for the store to begin to pay off. Actually the store is in an

excellent location for the future and I have no doubt at all that before too long this will prove to be a profitable store for some operator.

I have been asked how I could increase volume and profits as an individual owner of the Whittier store which I had previously handled as an executive of a six-store chain. The answer is that my success not only focused the spotlight on deficiencies of King Cole, Inc. as a six-unit firm, but also on many larger chains in this area. My Whittier store operates within 100 yards of a large and newer Safeway and a big and newer Food Giant market. There are a number of other stores in the area, including a Shopping Bag store about a mile away. I do a better gross, and I am sure, a better net than any of these stores. Based on my own experience I can state confidently that any independent who is of a mind to personally supervise his store, merchandise aggressively, and maintain close relations with customers and store personnel, can out-operate any chain store.

The chains in this area are good operators but when they grow too large they are actually easier to compete with from an independent's viewpoint. If I had a choice I would rather operate a store near a chain unit than near another independent.

The flexibility of the independent is another important factor. As an executive of King Cole, Inc., I felt an obligation to go through channels, to make explanations of my decisions. Now if I decide to do something it goes into effect immediately. With a chain operation, management has to reach its stores through supervisors who contact store managers. I can go directly to the manager or, in some instances, right to the clerk. On-the-scene ownership gives the independent a tremendous advantage over the chain store.

The supermarket field is wide open to independents who make an effort to compete. Only in the area of financing is the independent at a disadvantage. It is easier for the chain to get into a shopping center but this is a fact of our life which was not changed in the least by the merger of Von's and Shopping Bag. Some other advantages of the independent are: Adjustability to competitive conditions, and the availability of stock movement analyses through Certified

Grocers of California, which provide records to show which items are best sellers and which are slow sellers. Purchases through Certified also assure the independent of buying his stock competitively.

I have given the foregoing opinions freely and without solicitation. As a matter of fact, they are taken virtually verbatim from an article in Supermarket News for August 21, 1961 in which the reporter Les Gilbert quoted my statements after an interview with me. The statements were made long before I had any idea that I would be asked to testify in the Von's merger case. The statements are true today as they were then.

I personally believe, based on my own experience and knowledge of the business, that it is ridiculous to even think that the merger of Von's and Shopping Bag did or possibly could lessen competition in this area, and it is equally ridiculous to say that this business in this area will ever be dominated by just a few or even a few hundred chains. No chain or group of chains can outcompete any independent who knows his business and is willing to work, and there are just too many of us who like to own and run our own business to think of us as a vanishing breed. The independent in this area is as strong and successful today as ever and I expect that he will continue to be so. Certainly the Von's-Shopping Bag merger has not harmed anyone and it has not lessened competition. If anything, in my opinion, it made Von's more vulnerable to competition from independents like myself.

I have been told that some of the government witnesses say that the independent can do just as well as the chains by buying through Certified Grocers or from Orange Empire, but they cannot do as well on purchases of produce and meat. I do not agree with them at all as to the meat and produce. Where a chain like Von's might buy 500 flats of strawberries, for example, I buy only 50 and the buyer of 500 flats simply cannot be as selective as my buyer is. The result is that we get higher quality with far less spoilage. As to meat, my buyer gets equal, if not better quality by buying in more selective smaller quantities and at prices competitive with those of any of the chains.

I have also been told that the government witnesses say that Von's has a competitive advantage as to milk because

of its membership in Jerseymaid. I am sure that the few owners of Jerseymaid do make a good profit from the operations of that company but who can say if it is any better profit than they would have received if they had invested the money in real estate or the stock market rather than Jerseymaid? Actually, Golden Creme Farms has even more stockholders who are grocers than does Jerseymaid. I am a stockholder in Golden Creme Farms and I get milk and bread through Golden Creme. I believe there are about 90 grocers who own stock in Golden Creme Farms and who buy milk and bread through that concern. There is nothing to prevent other grocers from purchasing some of the Golden Creme Farms stock and buying their milk from that organization. But while this might be a good investment for them it would not give them any competitive advantage just as Von's has no competitive advantage because of its investment in Jerseymaid. The fact is that the price at which milk is sold by a dairy to the grocer and the price at which the grocer can sell the milk to the consumer are both fixed by state law in California, so if there is any competitive advantage in milk, aside from drive-in dairy depots which by law can sell at a lower price, it would lie with the grocer who uses one of the better advertised brands like Arden, Carnation, Foremost or Knudsen.

I have read the prediction of one of the government witnesses that if the merger of Von's and Shopping Bag is not set aside there will be other mergers of big chains which will result in a few chains dominating the market and "accentuate the large chains' advantages over the small grocery." I do not have a crystal ball, but I regard this as specious reasoning and I do not agree with it at all. I am certain that the merger of Von's and Shopping Bag did not lessen competition at all in this area and in my opinion there is no danger in the foreseeable future of the demise of the aggressive and able independent and small chains.

Joseph B. Goldberg

Subscribed and sworn to before me this 20th day of February, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF ALBERT GOLDSTEIN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

ALBERT GOLDSTEIN, being first duly sworn, does hereby depose and state as follows:

I own and operate the Toluca Mart, a retail grocery store located at 4020 West Alameda Street, Burbank, Los Angeles County, California.

My experience in the grocery business goes back to the days when my brother, Joseph Goldstein, sold oranges from a small truck in the streets of Los Angeles. In the late 1920's, my brother and other members of our family began operating a grocery store which was called The Boys Market. I joined the business in 1933 at about the time when the second Boys Market was opened. During the next 25 years, I served in various capacities with Boys and participated in developing that business into a 9 store chain. Today, Boys has 23 stores in Los Angeles and Orange Counties.

In March, 1958, Theodore Cummings, President of Food Giant, offered me the position of Vice President and General Manager of that chain. I accepted and stayed with Food Giant in that capacity until October, 1962. During that period of time, Food Giant experienced a fantastic growth. In 1958, it had 19 stores; by October, 1962, it had 53 stores. In the few months since then, it has opened six new stores giving it a total of 59. In addition, Food Giant operates Uni-mart discount houses in the Los Angeles metropolitan area and has many other business interests in related fields.

The circumstances under which I left Food Giant are these. As an executive of Food Giant, I found that I was spending almost all my time on business matters which had little relation to the actual operation of grocery stores. I am a groceryman, and the on-the-spot operation of a grocery store is what interests me. I cannot say that I was really interested in other aspects of running a large diversified business. Also, the pressures which came with my job at Food Giant were terrific. As a result, I decided that I wanted to make a change. In 1962, we learned that Von's Grocery Co. was going to open a large, new supermarket in

a shopping center directly across the street from the Food Giant market on Alameda Street in Burbank. Prior to this time, the Food Giant in Burbank had had very little competition, but it was considerably older and smaller than the proposed Von's store. I knew from my experience in the grocery business that the new Von's would undoubtedly take a good deal of business away from this Food Giant store, but I felt that if a good independent operator took over the Food Giant market, he could operate it successfully despite the competition posed by Von's. Time and again, I have seen an independent take over an older chain store and make it a success. This seemed like the perfect opportunity for me to get back into a grocery store. I knew the Burbank area, having lived there for 15 years. Therefore, I asked Mr. Cummings to sell me the Burbank store, and he agreed to do so.

I purchased this store and began operating it on my own on October 22, 1962. The Von's store across the street had just opened and a week later Alpha Beta opened a new supermarket about 2 miles away. I wanted to change the name of the store to the Toluca Mart, but I had difficulty getting an appropriate sign for the store. As a result, for the first four weeks, I operated under the name Food Giant. Of course, during this period I was not able to run independent ads or institute other policies which I had in mind. It was just as if I was operating this store as a manager for Food Giant. During these four weeks, the sales volume of the store declined.

Finally, in late November, 1963, I got my new sign, began advertising under the name Toluca Mart and instituted the merchandising techniques I had decided upon. In a very short time, the sales volume began to increase. In January, 1963, the sales volume in the Toluca Mart was about the same as had been enjoyed by Food Giant at this location prior to the opening of the Von's store across the street. I am sure that my sales will increase in the future as my store and its policies become better known in the community.

This new venture of mine is founded upon my conviction that a good independent market operator can out-compete a good chain store any day in the week. The reasons why he can do so are these:

1. The independent, through cooperatives such as Certified Grocers, can get his groceries on his shelves for a lesser cost than the direct buying chain. Based on my experience with Food Giant, which purchased directly from suppliers and operated its own warehousing and distribution system, and based on my knowledge and experience as a member of Certified, I can state as a matter of fact that I can buy cheaper than a large chain.

2. The independent is in his store personally supervising his business. He does not have to rely on supervisors or store managers to do it for him.

3. The independent can introduce a personal touch into his business by giving his store a friendly atmosphere and by personally serving his customers.

4. The independent can direct all of his competitive effort toward the objective of luring customers away from the chain competition in his particular community. On the other hand, the chain must consider the effect of its policies on all of its stores and in all the communities it serves. Also, by reason of its size, and the complexities of its business, it takes time for a chain to make changes in all aspects of its business. The independent is much more flexible and can make changes much more quickly. In this aspect of the business, there is no question that an independent holds a tremendous competitive advantage over his chain rivals.

5. The independent's costs of operation are lower than chains and he should be able to earn a greater margin of profit than the chain.

I am sure that I can operate the Toluca Mart more successfully despite Von's competition than the same store could have been operated under Food Giant, solely because Food Giant, being a large chain itself, has none of these advantages. This does not mean that Von's is any better than Food Giant. It means only that an independent can compete more effectively against a chain store than another chain can.

As a matter of fact, I believe that an independents' best possible location is directly across the street from or next

door to a chain store. With Von's directly across the street in a shopping center, I know that people will be attracted to this immediate area. Once they are here, they have a choice between shopping at Von's or the Toluca Mart. With the advantages I hold over Von's, I am sure I will get my share of the business, despite the fact that Von's name is well known and my store's name is not and despite the fact that Von's store is larger, newer and more attractive. On the other hand, if Von's had its store a mile away, we would be constantly tugging and hauling for customers to come to the vicinity of our individual stores. I would have no chance to attract those who went to the vicinity of Von's store.

I recognize that in obtaining shopping center locations, the chain has an advantage over the smaller concern. Shopping center developers prefer established chain names which are inevitably more attractive to lenders than unknown names. But this does not mean that a single store operator cannot expand his business. Not all of the good locations are in shopping centers. For example, I have been offered at least one other store which I decided not to buy because it was too far from my present store. I want to develop a small chain of stores, all of which are located in the same general area and close enough to each other to permit my personal supervision of them. I am confident of my ability to achieve this goal ultimately.

I have been asked by attorneys for Von's Grocery Co. to express my opinion of the merger of Von's and Shopping Bag. I do not believe that that merger has affected competition in grocery retailing in any way. I do not believe that it has given Von's any decisive advantage over its competitors. If I felt otherwise, I certainly would not have purchased the Toluca Mart directly across the street from a new Von's store. On the contrary, I believe that smaller grocery concerns have an excellent competitive opportunity in Los Angeles, and we are bound to see many of today's smaller concerns and many newcomers prosper and expand their businesses in the future. Under these circumstances, I have no fear that the food business in this area will become dominated by a few large concerns.

Albert Goldstein.

Subscribed and sworn to before me, this 20 day of February, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal].

My Commission Expires June 22, 1963.

AFFIDAVIT OF HARLOS GROSS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

HARLOS GROSS, being first duly sworn, does hereby depose and state as follows:

I am the owner and operator of Shopping Mart, which is a former Shopping Bag store located at 9476 East Las Tunas, Temple City. I purchased this store from Shopping Bag on April 7, 1953, and I have run it successfully and profitably ever since that time. I have had no desire to expand and build a chain. I am grateful to be a small operator.

Membership in Certified and A. M. Lewis, Inc.

I have membership both in Certified Grocers and in A. M. Lewis, Inc. Orange Empire Cooperative. Because of this membership I can buy my groceries just as cheaply as any chain and I can meet any competition, bar none, whether it is from stores of Apha Beta, Safeway or anyone else. Certified and Orange Empire do not handle meat or produce but I can do just as well as any chain on that. I emphasize quality and service both on my meat and my produce. I buy nothing but the best meat and produce and there is not any chain that can out-compete me.

Competitors in the Area

There are 17 grocery stores within a two-mile radius of my store. Within one mile of my store are stores of Apha Beta (just around the corner), Mayfair, Lucky, Safeway, A & P, and Market Basket. When I bought this market from

Shopping Bag in 1953 there were only 5 stores within a two-mile radius of it—now, as I stated, there are 17 and they have not hurt my business at all. My store did a gross of \$600,000 the first year I had it and every year since it has done over \$1 million a year. This has given me and my family a good living and I have made money. I have no doubt that this will continue.

Ability of the Single Store Owner to Survive

For many years I have heard it said that there is no place in the grocery business for the little man, and I suppose that despite our continued survival and success this will continue to be said. Of course, some small operators—and some chains have failed, just as there are failures in every business. Success or failure in this business is pretty much up to the individual. I have made myself a part of my community. I belong to Kiwanis, the Chamber of Commerce, I am on the school board and I have been active in Little League and the Boy Scouts. This has made friends for me, and I not only like it but it has helped my business. I think in this respect I have an advantage over the chain store whose manager may not live in the particular area. Moreover, I believe I am more cost conscious and more flexible in my operations than the chain manager. Of course, I am not opposed to the chains—they perform a very useful and necessary service to the public and afford employment to many thousands of people. But no able and aggressive operator need fear any of the chains, in my opinion, and there is plenty of opportunity for persons to enter the business and to prosper and grow.

Opinion as to the Effect of the Von's-Shopping Bag Merger

It seems to me that this merger has kept a local business in local hands, and I believe this is preferable to a local chain selling out to some national chain. Everyone that I know in this area in the grocery business has respect for and confidence in Mr. Hayden and Mr. Von der Ahe. They are tough but fair competitors and they were able to build their chains from scratch because of their hard work and self-sacrifice. If Mr. Hayden desired to realize a capital gain out of his years of hard work I believe he should be

permitted to do so. I have been told that the government attorneys claim that the merger may substantially lessen competition or tend to a monopoly. To my mind this charge is ridiculous. It could only be made by someone who does not understand the business in this area. Competition in the retail grocery business was strong before the merger and, in my opinion based on my knowledge of the business, the merger has had no effect on the competitive situation. Moreover, there are just too many people who are able to enter the business and run a successful single store or chain for anyone who knows the business to think there is a danger of this business being controlled by just a few operators. There are hundreds of successful competitors in this area and in my opinion there always will be. As for me, I am not afraid of any competition, anywhere. I can do well and so can anyone else who is capable of running the business and is not incompetent.

Harlos Gross.

Subscribed and sworn to before me this 25 day of October, 1962.

Walter T. Shatford II, Notary Public in and for said County and State, [seal.]

AFFIDAVIT OF PAUL A. HINES, JR.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

PAUL A. HINES, JR., being first duly sworn, does hereby depose and state as follows:

My father and I own and operate a market under the name of Hines Grocery Company, at 780 E. Colorado Boulevard, Pasadena, Los Angeles County, California. My father, Paul A. Hines, Sr., started in the grocery business in 1919 when he and his brother borrowed \$500 and added \$250 of their own which they used to buy a small store in Pasadena. Thereafter, my father continued to operate stores in the Pasadena area and in Avalon on Catalina Island. In 1945, he purchased the store we now operate from

Thriftmart. I became active in the business in 1949, our Avalon store was sold and since that time have concentrated our efforts on our Pasadena store.

Under the management of Thriftmart, that store has been a consistent money loser, and when my father purchased the store, there were many of his friends and acquaintances in the grocery business who felt that he was making a mistake. Our records show that in the first month of operation, our store did a gross volume of approximately \$12,800. In December, 1962, the last full month of our operation, our sales amounted to approximately \$200,000.

In recent years, my father has become less active in the management of the business, and I have become more active, to the point where I am now primarily responsible for conducting the business.

In our store, we offer only top quality products, and our prices are somewhat higher than in the average grocery store. For example, we sell only meat which has been graded as U. S. Prime, while most grocery stores sell lower grades of meat. We also offer our customers certain products sometimes referred to as fancy foods, which are not customarily offered for sale in the typical grocery store. In addition, of course, we offer a full assortment of food products usually found in other grocery stores.

We provide our established customers with charge accounts, and I would estimate that approximately 75% of our business is done on a charge account rather than a cash and carry basis. We do not offer a delivery service, but we will take a telephone order from a customer and have it ready when he or she comes in to the store.

We are members of Certified Grocers of California, and through that organization purchase grocery products on terms as favorable as in the case of the direct buying chains. Certified does not handle some of the products, such as the fancy foods which we offer for sale, and those are purchased through suppliers who deal in those types of products.

The unique qualities of our store, we believe, attract a certain type of customer, and we also believe that we attract and hold other customers through the personal service and attention which we give to them. My father

personally supervise all aspects of our business. We spend a great deal of time on the floor of our store where we meet our customers and get to know them personally. Our employees are also trained to provide the customer with courteous personal service. Seventy-five percent of our employees have been with us for 10 years or more, and during that time, they too have created friendly personal relationships with our regular customers, which, I believe, has enhanced our trade.

Despite the dire predictions for our store's future when it first opened, we have done very well, and we are most grateful for the success which we have achieved. I should also add that we have been successful despite the fact that we face vigorous competition from nearby chain and independent stores. Our competitors include a store operated by Jurgensen's about 4 blocks away. Jurgensen's is a company which operates stores similar to ours in that they, too, offer top quality products at somewhat higher prices than most grocery stores. In addition, we face competition from a Ralph's store about 3 blocks away, a Safeway store about 6 blocks away, a Pantry Market about 4 blocks away and an El Rancho Market 6 blocks away. In addition, there are other independent markets in the vicinity of our store, including a Gertmanian's market approximately a mile from our store. But this competition, as intense as it is, has not prevented us from getting our share of local business.

In my opinion, as long as there is a Certified or some such organization which can supply independents with grocery products at costs comparable to those paid by the chains, there will always be an opportunity for an independent to compete successfully in the Los Angeles area. Also, there is opportunity for an independent to increase his business by adding new stores. We have been approached on certain occasions with the idea of opening additional stores, and we have not chosen to do so because we are content with the operation of one store and do not wish to go into debt or to incur the added burden of a new store, particularly when we are aware that it would be impossible for us to give the same personalized service to customers if our attention was divided between two stores. However, it is obvious that many operators who have started in recent years with only one store have added additional stores and

apparently have succeeded. In our own vicinity, we have seen Pantry Food Markets expand from a one store operation in 1954 to a 10 store chain today. Another example is El Rancho Markets, which has recently become a 3 store chain. We face competition from stores operated by both Pantry and El Rancho, and we find them to be very keen competitors. In many respects, they are of greater concern to us than the stores of larger chains.

It is my impression that smaller chains have emerged and grown in the past 10 years at a rate greater than in the case of the larger chains. Under these circumstances, I cannot foresee this market becoming dominated by a few large chains, and I think we will continue to see the development and growth of smaller concerns in the years to come.

In my opinion, the merger of Von's and Shopping Bag is in no way offensive to competition. It has certainly not adversely affected our business, and based on my experience, I do not see how it could have any such effect on anyone else's business.

Paul A. Hines, Jr.

Subscribed and sworn to before me, this 10 day of Jan., 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

I have read the foregoing affidavit and I concur wholeheartedly in all of the statements and views expressed therein.

Paul A. Hines, Sr.

Subscribed and sworn to before me, this 10 day of Jan., 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF JOHN H. IRWIN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

JOHN H. IRWIN, being first duly sworn, does hereby depose and state as follows:

I presently own and operate Irwin's Market, located at 1140 East Carson, North Long Beach, California. I am also the President of the Southern California Grocers Association, a position I have held for the past two years. I am the First Vice President of the California Grocers Association as well as Chairman of its Public Affairs Committee, and I am a member of the Board of Directors and Vice Chairman of the Finance Committee of Certified Grocers of California, Ltd. I am also an active member of the National Association of Retail Grocers of the United States (NARGUS).

I first came to Southern California from Oklahoma in 1936. Thereafter, I worked as a salesman for Mountain View Dairies, Di Carlo Bread and the Bohemian Distributing Company.

In 1944, Ralph Noble and I opened a small (4,000 square feet) market in Long Beach. Between 1944 and 1947, Mr. Noble and I opened two more markets, one in Hollydale and another in Long Beach, and in addition, we operated two liquor stores. My partnership with Mr. Noble was dissolved in 1947, and I took over operation of our Hollydale market on my own. In the next three years, I opened two additional markets in Long Beach.

In 1950, my brother and I decided to open a supermarket in Orange County, an area which was at that time experiencing a rapid growth. Our first store—Bob's Supermarket—was opened in Buena Park. In 1953, I bought my brother's share of the business and ultimately built Bob's Supermarkets into a seven-store chain, which included a large (19,000 square feet) store in Anaheim.

In 1958, Bob's Supermarkets was merged with Mayfair Markets, a retail grocery chain with stores in various areas of California and Arizona, and I became a Vice President of Mayfair in charge of its 19 stores in Orange County. In 1960, I was made Vice President and General Manager of

the Low Cost Division of Mayfair, which was opening a number of discount food outlets in the Los Angeles Metropolitan Area.

In July, 1962, I resigned from my position at Mayfair and purchased the market I now operate from Fox Markets. My son and I have enlarged and remodeled that store. We opened it for business under the name of Irwin's Market in August of this year.

I suppose it can be said that I have had experience in every aspect of the grocery business in Los Angeles over the last 26 years. I have operated single stores and small chains, large stores and small ones. I have been employed by suppliers, and I have been actively engaged in the business affairs of a large cooperative buying organization. I have been an executive of a large chain, and I have had experience in the sale of groceries through discount outlets. In addition, I have been an active member of a number of grocery trade associations.

As a result, I think I know something about food retailing in Los Angeles and Orange Counties. I am firmly of the view that while competition in that business is intense and vigorous, there is a place for everyone who is willing to work hard and who knows something about running a grocery store. It is in my opinion that in every community in the Los Angeles Metropolitan Area opportunity is available to both the independent and the chain store.

As the owner of a single store or a few small stores, I found that competition from the chains was intense, but I also found that the smaller concern can compete successfully and profitably and that it can expand. As a chain executive, I recognized that competition from independents and other chains was vigorous, but I found that a chain store can compete successfully. As one involved in the discount sale of food at a time when it was a relatively new method of food distribution in Los Angeles, I recognized that the retail grocery business is one in which competition may take new forms and that those willing to try innovations in merchandising have a good chance of success.

Single store operators, small chains, large chains and discounters each has its own unique advantages in this market, in my opinion, but none of them has a decisive advantage over the other. One of the reasons for this, one of

the equalizing factors in food retailing, is Certified Grocers and other cooperative buying organizations. A chain may buy directly from a supplier in carload lots, thereby realizing savings which flow from quantity purchases, but Certified likewise buys at the same prices and on the same terms for its members. In fact, Certified purchases are greater in quantity than in the case of any of the area's chains. Certified also provides the independent retailer with the advantages and economies of central warehousing and an established distribution system as well as aiding him with merchandising and advertising problems.

The question is sometimes asked why all chains do not buy from Certified and take advantage of its services. In this connection, it has been pointed out that some chains, as they grew in size, decreased their reliance on Certified, built their own warehouses and operated their own distribution systems. My experience has been that in the case of most chains there comes a time when their size requires them to take over direct control of purchasing, warehousing and distribution in order to grapple directly with the problems that arise in supplying a number of stores. In other words, the complexity of food distribution is magnified as the number of stores being served by any chain increases, and the problems which arise become such that the more efficient and successful way to deal with them is to take buying, warehousing and distribution functions away from an intermediate such as Certified and place them under the watchful eye of experienced personnel within the chain's own organization. But the fact remains that Certified provides the independent with buying, warehousing and distribution advantages comparable to those enjoyed by any chain.

I have already mentioned that independents, chains and discounters each has unique advantages. The chain, for example, has advantages which flow from the ability to allocate costs to a number of units. A chain also has the opportunity to create and exploit a name which may become familiar to a vast number of customers or potential customers and which is therefore more likely to gain quick and favorable customer response, even in new areas where it opens stores. Also, I have found that many customers believe that chains have lower prices. This is not true gener-

ally, but the fact that some people think it is true is an advantage. Also, the larger chains can afford to advertise in metropolitan newspapers with the assurance that because of the number of communities served by its various stores, such advertising will not be wasted on a vast number of people who would have no opportunity or inclination to shop at their stores. This, of course, the small concern cannot afford to do, and it must confine its newspaper advertising to community papers for the most part.

The discount outlet offers the customer lower prices made possible by lower costs of operation. Also, discount food outlets are usually found in discount houses which offer a wide variety of consumer products, and hence offer the customer the advantages of one-stop shopping.

The independent, on the other hand, has a smaller business, and as a result is able to pay close personal attention to costs and other variables. Being smaller, he is also more mobile than a chain so that he can move quickly to meet local competitive conditions or he can take the initiative in competition while his chain competitors are framing chain-wide policy or solving area-wide problems which may or may not have any particular relevance in the community which the independent serves. Finally, I am of the opinion that a smaller concern can gain advantages over chains because of a great ability to form personal contacts with his customers and his community.

The importance of personal contact and service was never more apparent to me than when I was operating Bob's Supermarkets in Orange County. This was an area in which a whole new series of communities was being formed and to which new residents were flocking, ready to occupy new homes and acquire new shopping habits. Right behind them came grocery stores operated by a host of chains and independents, all vying for this new business. It was apparent to me that in this highly competitive atmosphere, customer loyalty was going to be doubly important. For this reason, Bob's had a policy which emphasized the personal touch. For example, we maintained butcher service meat departments while many other stores were offering pre-packaged meats. Our meat business was particularly successful, and I think the reason for our success in that respect was directly attributable to the personal relation-

ships which our butchers were able to maintain with our customers. I really believe that this personal relationship convinced many shoppers that they were getting better meats.

Bob's also published a weekly, twelve page magazine entitled, "The Square Dealer," in which we gave away free classified advertising space, and for which, incidentally, I wrote a weekly column.

In my opinion, the importance of personal service in grocery retailing is more important today than ever before. I feel that people are hungry for good personal service, the type of service the chains often do not seem to give. One of the principal reasons for my decision to leave my position at Mayfair and open up a single store was that I enjoy being in a grocery store, meeting, people, dealing with my customers directly, and I am convinced that a single store operator can succeed by stressing personal service. Therefore, I have chosen employees who were outgoing and friendly, and I am careful to see that they are always courteous to customers. We have a butcher service meat department. We also have a urn of coffee brewing at all times, and anyone can stop and take a cup whenever he wishes. I chat with my customers, become friendly with them. As a result, I believe Irwin's is a store which people will like to come to.

Since we opened the doors at Irwin's in August, business has been good, and I am confident that it will get better as we become better known in the community. Already, however, our sales exceed by 20% or 25% the sales which were being experienced in this same store when it was operated by Fox Markets.

I chose my present location despite the fact that I was aware that I faced competition from stores operated by Von's, Ralph's, Shoppers, McCoy's and a number of good independents. I did not then and I do not now fear that competition, and I am sure that I will get more than my share of the business.

Obviously, I would not have embarked on this new venture if I thought that the independent could not compete effectively with chain stores, and I would not have purchased a location in competition with a store operated by Von's if I felt that a Von's store had a competitive advan-

tage over me, whether by reason of the merger with Shopping Bag or otherwise. In fact, it is my view that that merger had absolutely no effect on competition or the ability of the independent to compete. In my judgment, it is no more difficult to compete against a Von's or Shopping Bag store now than it was before the merger.

In addition, I have no apprehension that the Los Angeles Metropolitan area will ever be dominated by a few large grocery chains. There are too many able and aggressive independents and smaller concerns, too many people like myself, willing and able to open up a grocery store, and competition is just too intense, too vigorous, too many-sided to permit the domination of the grocery business in this area by a few large concerns.

John H. Irwin.

Subscribed and sworn to before me, this 9th day of November, 1962.

J. B. Sullivan, Notary Public in and for said County and State, [Seal.]

My Commission Expires Sept. 21, 1966.

AFFIDAVIT OF O. W. RICHARD

STATE OF CALIFORNIA,
County of Orange, ss:

O. W. RICHARD, being first duly sworn, does hereby depose and state as follows:

My Grocery Background

I am President of Richard's Lido Market. For several years I have served as a member of the Food Employers' Council of Los Angeles. I have been a director of Certified Grocers of California, which is well known in the industry. Certified is a co-operative food distribution center, supplying the food needs for approximately 1500 markets in the Southern California area, and it is known as one of the

largest of its kind in the world. I have also served as a Regional Director of the Supermarket Institute of America, which in many respects is international. The purpose of this institute is to regulate, develop and guide the destiny of the supermarket business in the United States of America. I am a member of the Retail Grocers of America Research and Education Committee. This group is comprised of merchants from every state of the Union. The purpose is to create a better way to distribute food to the American people.

I have been constantly in the grocery business since I started with Safeway Stores in Belmont Shores, south of Long Beach, in 1933. I was with Safeway about fifteen months. I worked as a clerk and trainee for management. My hope was to learn the business. When I left Wisconsin in 1933 I was an instructor of Economics in a private school in Oshkosh. We came to California during the terrible thirties and thought that it would be a nice opportunity to start over completely in a new way of life, because almost everybody had suffered some of the effects of the crash, and we were pretty well equalized. The food business offered the greatest challenge, to my way of thinking, because it lacked so much that seemed important to me,—good displaying, clean stores, trained personnel, and general business knowledge application. So, Mrs. Richard and I gave up everything and started all over in the food business. \$11.00 per week was my salary for a full week's work.

After leaving Safeway, I went to work in a little store in Newport Beach as a clerk and manager and bookkeeper and buyer. This was in March, 1935. I stayed in this particular spot for thirteen years—from 1935 to 1947, both inclusive. That was during the war. The opportunity to branch out into one's own way of life was, during those years, limited. My little market was a key market in the community at that time. Naturally, everybody strikes out in any venture with the hope and dream that he can have his own business some day, and I wasn't unusual in that respect, so I dreamed about my own market, and the opportunity eventually came, and I was in business.

When Lido Isle was under development, the whole area began to take on a new look to some of us in the community. And that spot was, in my opinion, a good place for me to

start my own business. So we hurried around to find out whether or not it would be possible for us to have this location. We cultivated many friends in the twelve or thirteen years in which we were in the community. These friends were men of substance, some of them, and it didn't take too much to have them develop a feeling of confidence in me to the extent that they allowed me several hundred thousand dollars with which to go into business. This was a great challenge. The location was decided upon. Mr. Griffith, the owner of the land, not only provided this location, but also provided the necessary capital. Since then fourteen years have passed and many wonderful experiences have been mine in this business, and I suppose that in many respects my market now is recognized as one of the top ten markets of the world because of its individuality, its operating philosophy, its dedication to service and its dedication to the principles of free enterprise.

My Experience With and Views on Competition

I found it necessary to incorporate, for the usual reasons. We needed to have the protection that the corporation gives in many areas, principally tax-wise. I think that was the principal reason. The stock is owned only by my family, just three of us. Fourteen years ago when I started, my first annual sales amounted to about \$1,200,000.00. This last year they were just short of \$4,000,000.00 in the food section alone.

We have just one grocery store. There was never any need, in my opinion, to go out and develop more markets. This one market provided all the substance we needed and it answers all of the requirements of a normal challenge for a business man. You go into business for several reasons: The principal reason is to make money; the second is to satisfy the natural desire to own your own business; the third one might be to create a kind of business that you can be proud to pass on to your progeny; another reason is that it gives a man an opportunity to prove that if a person operates according to a basic philosophy, and this philosophy is an expression of an individual, then nothing actually can happen to destroy the progress of this business, whether it be competition, hard times, or any of the other normal vicissitudes of a man's normal business experience.

I think that anybody can compete today in any kind of a business, providing however, that the requirements of a business man are measured up to. I don't think money is the prime requisite. I don't think location or the size of a business is an important issue. I think that when a man goes into business, he goes into it with the idea that he is going to succeed, and if he establishes a policy and stays with it year after year, it really makes very little difference where he locates or what the environment for the growth of this business is, as long as he maintains a set of standard rules acceptable to the people who are his customers. We have all types of supermarket operators near our place. We have Market Basket right across the street from us, about a block up. Alpha Beta is within a radius of one mile of our place, and Fox, Mayfair, Safeway, Food Giant, Thrifty Mart, and many independents, and all are within a radius of three miles. I am in a spot where I draw my business from inland. Most of my customers have to pass these named markets to get to my place. I would say that a good 25% to 30% of my business will pass other businesses to get to my place of business. They prefer to shop in my store because I give them the merchandise and service they want and need. Almost all of these stores have started in since I did. Alpha Beta was there but they have enlarged their market twice since I have been there. Safeway has moved three times since I have been there. All American was my nearest competitor at that time. They built two additional markets in the community during this period of time.

Actually my competition, and competition generally, increases every year. I don't think Von's-Shopping Bag merger, or any other merger, or any other market of any kind would have a tendency to decrease the competitive factor in my market. The same condition of competitiveness exists today that it did fourteen years ago. I don't think there is any difference. I think competitive advantages are a very personal thing. I mentioned before that the merchandise, the location, the size of your market,—these things do not give you a competitive advantage. Even price will not give you a decided competitive advantage. I think the success of any market depends entirely upon the personnel of the store, the willingness on the part of the mer-

chant to face up to the demands of a trading area, the gree to which personnel are trained and schooled to handle all situations that have to do with selling.

It is most apparent that the businesses who survive those who are anticipating the needs of tomorrow and justing to them immediately, and in every respect an independent operator can do this three times faster than a chain operator can, principally because he is sitting on moving, living enterprise every day and he is able to determine when his business is slacking off or when the dollar value is dropping out. Any independent merchant who does not face up to the demands and the changing of the times will always try to find an outside reason for this. We seldom will punish ourselves or blame ourselves for something that we are not able to cope with, but the truth is that this is where it belongs,—in the management's lap. All decisions are made in the owner's little office. And it comes a terrific challenge every day to be able to say "I am a one store operator and a good one, and competition has made me this way." I am not big enough to be able to attract the high-priced consultants and supervisors and experts to my business, but if I am alert I can learn from the mistakes of the big chain operators and adjust my business quickly to these needed changes. This is the terrific advantage an alert independent has. The cost of doing business for an independent is much less in many respects, than for a multiple unit operator, because you don't pay for a lot of extraneous supervisory help. I found out a long time ago that the most important area of improvement in any business is people, and a small independent merchant knows this better than anybody else. It is your relations with people that make the difference. One of the greatest advantages an independent has is the co-operative buying aids such as the Certified Grocers. Our cost of merchandise is never higher than any of my competitors have to pay. Fresh produce is something else again. Meats and produce—we call anything that is perishable "perishable produce" the produce department gives the independent one-unit operator a terrific advantage, because we are not buying for 20, 50 or 100 stores. We are buying for particular customer demands. So when we are selecting our strawberries, our meats and our tables, we are looking for the best for one select outfit.

Now you have asked me how I support my business against competitive practices. The smartest way to do it is good customer relations. Good customer relations are made up of a whole panorama of things. We think that we have to have good competition to begin with to make us productive customer-wise, because you get to the point where you know you can't have all of the business in the community. Then you begin to zero in on the type of customer you want to serve, and I don't care how different a merchant is, one from another, if he patterns his service in accordance with his personal philosophy, he can get all the business he needs to sustain himself. The thing that disturbs so many small merchants is that they always want to be copiers instead of leaders. Store A puts in trading stamps, so Store B puts in trading stamps. He thinks this must be the way to build business, but it isn't. These are the things that your competitors will do to try to outsmart you in their efforts to be a better merchant. But the facts all boil down, as I see it, to providing the customer with the things that she insists on having, and when you get customers trading in your place because you have a better personnel program, a better diversification of merchandise, a cleaner shop and a steadfast policy of service, and if you are willing to give more than a little bit, then I don't think anybody can take away a customer. Because if you lose a customer for any reason, it is so easy to find out why you lost him, and it usually reverts back to the fact that the merchant failed to fill the customer's need. Find a need, and then fill it. That is the secret of success. And this is the way I feel about it. We can talk about mergers hurting small operators or large operators, but this isn't the truth. I sincerely believe that whether a merger in my community takes place and makes fifty stores out of twenty-five, or one hundred stores out of eighty, they are absolutely no different than the existing competition which already has 220 stores in its chain.

I don't think it is ever possible for any national chain or any local chain to get so big that it will completely destroy the desire to be merchants, on the part of men who are born to be merchants. I started off in a chain store. I would not be in this position today if it hadn't been for a large national chain store, and I suppose I can honestly say that 25% of the merchants I know today started off with a chain store.

They learned the trade and then their desire to be independent merchants fired them into action. When you start this way, nobody can stop you.

Naturally, we have a lot of people going out of business, and I have to say this, that a lot of them should go out of business, because they refuse to keep up with the times and to be good merchants, and when the first challenge comes along, they give up. This is not a lessening of competition. I think from my experience that most of these people who are quitting the business are selling out to other business and joining with them in building a better shop in which to trade. This does not mean that a large chain is destroying another market. I would say it is a matter of offering a better service that would enhance the value of these other markets and improve the community as a result—offering a better opportunity for a good merchant to become a better citizen because of the balance of timing, the ability to balance his time. I have a standing offer of better than one million dollars for my name only, and a lifetime tenure in one of several chain operations. When a one-unit operator becomes something to be desired in a community because of the individual application of a personal philosophy, then I would say that the chain operator himself is sorry today that he isn't a one-store operator, because so many of the advantages of a one-store operator are lost in his multiple, remote control operation.

Now, consider the growth factor in Los Angeles and Orange Counties. We have over 800,000 people in Orange County today. Ten years ago we had 200,000 people. Well, naturally everybody in business knows that five years from now this is going to be a good place to be in business. People with judgment and foresight are going to move into this area, or they are going to join hands so that the management team of a combined operation is better equipped to supply the needs of a community based upon the growth of the people in that area. I couldn't possibly take care of the business in my community today if there were no more stores in my community today than five years ago. I would be forced to expand. Now I don't want to expand. If I don't want to expand, I have to pay the penalty for standing still. But my business has never decreased in dollar value or in profit potential. Every year has been better than the year

before; always more exciting and more demanding of a challenge. I want the world's finest store, if it is possible, and the world's finest store in which to work. The price I have to pay is to erect a stronger competitive policy in order to hold my little island. And if I use all of the talents that have been given me, and if I am willing to read, study, and learn something more each year, I can face a stronger and better competition. And competition is increasing every year.

Von's Merger Has Not Changed the Competitive Picture

Based upon my many years of experience in the grocery business, I can say positively that the merger between Von's and Shopping Bag has not lessened competition in any respect, either for me or any other grocer in our rapidly expanding community. Under our free enterprise system, the door is wide open to anyone who has a strong desire to be a grocery merchant and who will do enough work to find a need for his services and then fill the need.

O. W. Richard.

Subscribed and sworn to before me this 14th day of February, 1963.

Alfred J. Cusolito, Notary Public, State of California—
Principal Office, Orange County, [Seal.]

My Commission Expires Jan. 16, 1966, 3433 Via Lido,
Newport Beach, Calif.

AFFIDAVIT OF LEILA M. ROBERTS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

LEILA M. ROBERTS, being first duly sworn, does hereby depose and state as follows:

I am the owner of Roberts Market, located at 14 E. Sierra Madre Boulevard, Sierra Madre, California. I have had 35 wonderful years in the grocery business at this location. My late husband and I started the business, selling

only produce at first, and then later we added the meat, grocery and delicatessen departments.

This is a highly competitive business and I am on the job every day to see that my store is operating properly.

I believe that an independent such as myself has certain advantages over the stores of any of the chains. We get our groceries just as cheaply as any of the chains that buy direct, because of membership in Certified Grocers of California. And most of the chains sell off-brand private label merchandise. Most of the customers just won't stand for off-brands and for that reason we have always used only the nationally advertised top brands.

I have a few more employees than the average chain store and I can and do see that my customers get plenty of service from courteous employees. This policy has proved successful and I expect that I will continue to operate a very successful market.

I do not see how the merger of Von's and Shopping Bag hurt anybody in the business. I am sure it did not lessen competition and I do not think there is any possibility that there will ever be a monopoly in the grocery business in this area. I know the able independent who works hard can compete successfully with any of the chains.

Leila M. Roberts.

Subscribed and sworn to before me this 19 day of February, 1963.

Nina Neale, Notary Public in and for said County and State, [Seal.]

My commission expires: April 26, 1965.

AFFIDAVIT OF ROBERT SHERRY

STATE OF CALIFORNIA,
County of Los Angeles, ss:

ROBERT SHERRY, being first duly sworn, does hereby depose and state as follows:

A partnership consisting of Louis Amen and myself own and operate the Vernon and Vermont Market located at 4375 South Vermont Avenue, Los Angeles, California. I have operated a retail grocery business at that location for the past 17 years.

In 1934, I graduated from Loyola University. I took a position shortly thereafter as a salesman for the Kellogg Company. In 1943, Ernest Van De Grift offered to enter into a partnership with me whereby he would finance the operations of a market, and I would manage and operate it. The location we chose was the Vernon and Vermont Market which I still operate. A few years later, I had acquired enough capital to buy Mr. Van De Grift out. Some years later, I took Mr. Amen into the business as a partner. We operate everything but the liquor concession in our store.

The Vernon and Vermont Market is located in an old building in an older section of Los Angeles. The community we serve is populated predominantly by colored people. Our store faces competition from a Ralph's Market (I am sure this is one of their better stores), a Foods Co. Market (a very aggressive competitor), a Better Foods Market (which is open 24 hours a day), a Von's Market (I believe this is one of Von's poorer and older stores), and a number of good to marginal independents. Wonder Market, another independent, is located only a few doors away from our store.

The development of my business was not easy. It required a lot of hard work and constant attention. But I believe that I can say that we have made our store a success. I also believe that any single store operator can succeed in the grocery business. Anyone who says that he cannot compete with chains or other grocers should find another way to make a living, since it is obvious in my opinion that he must either be inexperienced, incompetent or lazy.

I know from my own experience that any independent can succeed. In many respects, he can out-compete a chain store. For example, I personally am able to watch my costs, and Mr. Amen and I are working toward lower costs every day. In a chain operation, the problem of costs is much more complex. No one man can be in charge of all items of expenditure. Total costs per item are influenced by many factors, including how well a buyer, a warehouse superintendent and a store manager are doing their jobs. In my case, I personally take care of all of these aspects of my business. As a consequence, I can show a profit on annual sales which I estimate to be less than half of the sales which many chain stores have to reach just to break even.

The fact that I operate only one store also makes me more flexible than a chain store. I can adapt my prices to meet and beat chain competition on a limited number of key items, and I can do this in a matter of minutes. The chain store manager has to check with his superiors, and he may wait days before being able to institute a desirable change. It has also been my experience that I can often stock my shelves with a new item and be selling it like hotcakes two weeks before the same item even appears in the chain store.

Also, I can become better known in my community. Church and other groups often come to me for food donations for particular purposes. I am happy to accommodate them and in that way I believe I make friends and customers.

Finally, I am a member of Certified Grocers, and as a result, can buy groceries as cheaply as any chain. Certified also provides other services to its members which are of extreme value. The importance of these services is frequently underestimated, I think. From my own experience, I know that Certified employs some very able and hard working men who do nothing but assist independent grocers with merchandising problems. These men know what they are doing, and when they make a recommendation, I follow it, as I am sure other members do.

In my opinion, the merger of Von's and Shopping Bag has not affected competition in any way, nor do I see how it could, in view of the fact that it involved two companies who between them had only about 8% of the market. Nor do I foresee the possibility of a few chains dominating the

grocery business in Los Angeles. As long as there is opportunity for a single store operator—and there is—chains are not going to reach a position of dominance. Ever since I got into this business, I have heard some people say that they feared that the grocery business would soon be controlled by the chains. But this has never happened in Los Angeles, and so far as I can see, it never will.

Robert Sherry.

Subscribed and sworn to before me, this 19th day of December, 1962.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

DEFENDANTS' EXHIBIT AY

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title Omitted]

AFFIDAVITS OF DEFENDANT'S INDUSTRY WITNESSES WHO
OPERATE FROM TWO TO NINE GROCERY STORES

AFFIDAVIT OF EUGENE GELSON

STATE OF CALIFORNIA,
County of Los Angeles, ss:

EUGENE GELSON, being first duly sworn, does hereby depose and state as follows:

I am the President of Encino Market Company, which operates a supermarket under the name Gelson's at 16450 Ventura Boulevard in Encino (Los Angeles County). My father bought a small, 3,000 square foot market in Monteket Company. In addition, a partnership consisting of my brother, myself and other members of my family operates another Gelson's supermarket at 3525 West Victory Boulevard in Burbank (Los Angeles County).

I was literally raised in the grocery business. My father, J. M. Gelson, operated a small grocery store in Souix City, Iowa. I began working in the store when I was only 6 years father bought a small, 3,000 square foot market in Monterey Park (Los Angeles County). Later, he sold that store and purchased a 7,000 square foot market in Tujunga (also in Los Angeles County). This store was operated by my father, my brother and me until 1941 when Bernard and I entered the service. During the war, I was a B-24 pilot.

My father died during the war years, and in 1946, when my brother and I returned to Los Angeles, we pooled all of our resources, which amounted to approximately \$5,000,

and purchased a 700 square foot market in the North Hollywood community. Our business was successful, but we soon perceived that the trend in grocery retailing was toward larger supermarkets, and we decided to try to take advantage of the public's enthusiasm for this type of store.

Consequently, in 1951, we sold our North Hollywood store and with the proceeds and the aid of additional financing, we opened our Burbank store, which is 26,000 square feet in size. This store was a great success, and we later were able to acquire a parcel of property at the corner of Ventura Boulevard and Havenhurst Avenue in Encino, on which we built a 33,000 square foot store. The acquisition of this property and the construction of our store was made possible through profits we made from our Burbank store supplemented by additional financing. Our Encino store opened for business in March, 1960, and I believe that it has proven to be the most popular and successful store in the Encino area. We have enjoyed annual sales of approximately \$6 million at the Encino location in each of the years since it opened. In addition, our Burbank store continues to prosper.

In Encino, our store faces competition from a number of stores operated by chains. Ralph's has two stores, one approximately $1\frac{1}{2}$ miles and the other approximately $2\frac{1}{2}$ miles from our Encino store. Safeway operates two stores within 2 miles of us. Thriftmart also has two stores nearby, one being approximately $\frac{2}{10}$ of a mile and the other approximately $\frac{8}{10}$ of a mile away. Also, a Hughes, a Fox and a Von's store are on the outer fringe of our trading area. In addition, we face competition from small chains such as Piggly Wiggly, which operates a new supermarket $\frac{1}{10}$ of a mile from our Encino store, and Westward Ho, which operates a store approximately 1 mile away. Our Burbank store is located in an area served by stores of almost all the major chains, including Von's and Shopping Bag, and a number of smaller chains and single stores. In all, there are approximately 12 supermarkets near enough to our Burbank store to be in competition with it.

It has been our experience that we can compete effectively with both large and small rivals. Our success in this respect is attributable to many factors, but perhaps the

most important is that we assert a tremendous effort to make our stores attractive, convenient places to shop, in which the customer always receives maximum service.

Our stores are up-to-date in every respect. I believe that their exterior and interior appearance is unique and outstanding. We have put a lot of money and effort into architecture and design (an architectural rendering of our Encino store is attached hereto and marked Exhibit A). We provide ample parking immediately surrounding our stores. Once the customer is inside, he will find that our aisles are considerably wider than in most supermarkets. We do not permit the storage of any merchandise in the aisles. We offer the customer a selection of approximately 1,500 more items than in the average supermarket.

We spend more money than most grocers for janitorial service in order to keep our stores spotlessly clean at all times. Our employees also see to it that the merchandise on our shelves is always kept in an orderly fashion and that it is displayed in the most attractive possible way. In fact, customers still remark that Gelson's markets maintain a grand opening appearance on every shopping day. I think that our produce department is the best example of this type of merchandising. We receive countless compliments on the especially attractive way in which we maintain our produce department. We offer only the highest quality produce for sale, but quality doesn't attract customers unless it is apparent to them. I believe that our display of produce makes the quality of our produce stand out.

In fact, we try to offer quality products in all of our departments. We stick with brand names which have good consumer acceptance. For example, we have been invited on several occasions to join and buy dairy products from Golden Creme, a dairy similar to Jerseymaid, which is owned by a number of retail grocers including Food Giant, Foods Co., Better Foods and many others. We have declined to do so since we wish to handle Knudsen dairy products which we believe our customers prefer. In so doing, we realize that we are giving up profits which others in Golden Creme are earning, but on the other hand, we believe we are gaining customers for our store by offering them the products they want.

We also stress personal service. It has long been my belief that service is of the greatest importance in attracting

and holding customers. Service is also an aspect of grocery retailing in which an independent, in my opinion, can always outdo a chain store. We hire employees who can fulfill our demands for courteous, friendly service, and we are willing to pay more for their time than in the case of most chains. My brother and I personally supervise their work and assure ourselves that the type of service we want our customers to receive is being extended. For example, if any customer asks the location of any item of merchandise, our employees are instructed not merely to tell the customer where it can be found, but to escort him personally to the shelf where he will find the item he has requested. This impresses people. They like it, and the next time they will come back to Gelson's to do their shopping.

From what I have previously said, it is obvious that our effort to provide an attractive shopping surrounding and first class service costs money, particularly in the compensation of our employees. I believe our costs are therefore higher than in the case of most chain stores. However, since we can buy our groceries as cheaply as any chain, our prices are no more than 1% higher than in the case of chain stores. This 1% pays for the added services we offer and the better personnel we employ. Yet, it costs the housewife only a few cents more. Even if a customer were to spend \$100 a week for groceries, the added cost to her resulting from our superior service and layout would be only \$1 a week. These higher prices have not resulted in any loss of trade so far as we can tell.

The success of our business and the success of other independent grocers in Los Angeles is proof of the ability of independents to compete successfully with chain stores. There is no question in my mind but that a hard working single store operator can succeed in this business, and I do not know of any development in grocery retailing which has or is likely to change this.

The only disadvantage that I can see which an independent faces is in the acquisition of first rate locations, particularly in shopping centers. Most of the better locations today are developed by property owners or developers who need to borrow money in order to finance the construction of stores or other facilities on their property. They can usually obtain better terms from lending institutions if they can show that they have leased space to concerns with

triple A financial ratings. This means that the larger chains are favored tenants in shopping centers and smaller concerns with two or three stores are not usually offered the better shopping center locations.

This is a problem for which I have no ready solution. Perhaps it would be desirable to have the federal or state government guarantee leases of smaller concerns, thereby making their credit ratings as good as in the case of the chains. Perhaps there are other ways in which this problem might be solved. But I am sure of one thing. The merger of Von's and Shopping Bag did absolutely nothing to create or aggravate this problem. Both of those firms had triple A financial ratings prior to the merger and were able to acquire good locations. Von's is able to do so now. Moreover, I do not see how the dissolution of Von's and Shopping Bag could in any conceivable way improve the small concern's ability to obtain new locations. In short, the merger of Von's and Shopping Bag just has no relation whatever to the new location problem.

Additionally, in my opinion, the Von's-Shopping Bag merger is completely inoffensive in every way. It has not affected the vigor of competition. It has not put the independent at any competitive disadvantage, and I do not see how it possibly could. In fact, it has been my experience that the larger a chain gets, the easier it becomes for an independent to compete effectively against its stores. As a chain adds new stores, it seems to pay less attention to any single unit. Under these circumstances, the independent who can personally supervise his business gains an additional competitive opportunity. In short, it is my firm view that the merger of Von's and Shopping Bag has not and will not in any way substantially lessen competition or tend to create a monopoly in grocery retailing in the Los Angeles metropolitan area.

Eugene Gelson.

Subscribed and sworn to before me, this 8th day of Jan., 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF NATHAN GILBERT

STATE OF CALIFORNIA,
County of Los Angeles, ss:

NATHAN GILBERT, being first duly sworn, does hereby depose and state as follows:

William Fredrick and I are partners in Supreme Foods Company, which operates Bill's Ranch Market at 1028 San Fernando Road, Burbank, Jack's Ranch Market at 5399 S. Sepulveda Boulevard, Culver City, and the grocery concessions in White Front discount houses in Covina and San Bernardino. In addition, within the next month or two, we plan to open a new supermarket to be known as Ted's Ranch Market at Hobart Avenue and Santa Monica Boulevard in Los Angeles, as well as the grocery concession in a new White Front discount house in Torrance. All of our outlets, except the White Front store in San Bernardino, are located in Los Angeles County.

I have been in the grocery business for the past 40 N.G. years. In 1937, I became the manager of the Hollywood Ranch Market located at 1248 Vine Street, Los Angeles. At that time, this market was owned and operated by a partnership composed of William and Lawrence Fredrick and Theodore Weiner. In about 1947, I purchased Mr. Weiner's interest in the market. Shortly thereafter, the partnership acquired an old garage in Burbank and converted it into what is now Bill's Ranch Market.

In 1957, Lawrence Fredrick died. His son, Lawrence Fredrick, Jr., wanted to operate the Hollywood Ranch Market on his own. Therefore, that store was turned over to him. William Fredrick and I formed our present partnership to operate Bill's Ranch Market in Burbank. In September, 1958, we opened the store which is now Jack's Ranch Market in Culver City. In August, 1962, we opened our first discount outlet in the White Front store in Covina. Shortly thereafter, we commenced operating the food concession in the White Front discount house in San Bernardino, and as I have said, we plan to open another conventional market and another discount concession within a few weeks.

San Fernando Road in Burbank, where Bill's Ranch

Market is located, is a street on which many new and used automobile dealers have their places of business. It is Burbank's "automobile row," being similar in many respects to other areas in Los Angeles County where the predominant business conducted is the sale of automobiles. Experience has shown and it has long been believed by grocerymen that no grocery store could succeed on any "automobile row," primarily because there is usually very little foot traffic in such areas. Indeed, almost all of our customers come to our store by automobile. Bill's Ranch Market does not even have an entrance on the street, and access can be had to the store only from the parking lot behind it. Despite these factors, Bill's Ranch Market has been a great success. The store, as I have said, was a converted garage which initially was quite small. We have remodeled and expanded the store on several occasions in the past.

Our principal competition in Burbank consists of a Cracker Barrel Market (a two or three store concern) in a nearby shopping center and an Alpha Beta which is also nearby. Until recently, Ralph's operated a store one-half mile north of us on San Fernando Road, but that has now closed its doors. Presumably, Ralph's was not operating profitably at that location since I cannot conceive of any other reason for the store being closed.

Jack's Ranch Market in Culver City has also been a successful store for us. This is a comparatively small store which was operated unsuccessfully by a series of grocers before being taken over by us. It faces competition from stores operated by Mayfair, Safeway and Alpha Beta, and from a Unimart discount house operated by Food Giant.

Our discount house concessions face competition from stores operated by almost all the major chains, numerous independents and other discount houses. In fact, there are five other discount houses with food departments in the Covina area alone.

Our contemplated store at Hobart and Santa Monica Boulevard will face competition from stores operated by a number of chains and independents. This store was formerly a grocery store operated by Yor-Way Markets, a 17 store chain which went out of business in 1961. We have expanded and remodeled it, and expect to do very well at this location.

Despite the vigorous competition which characterizes each of the areas served by our stores, we have been very successful. The keynote of our policy in our conventional markets is that we stay open 24 hours a day, 365 days a year. This policy was instituted in the Hollywood Ranch Market many years ago and contributed significantly, in my opinion, to the acceptance and favorable reputation of that store, not only in Hollywood but all over the Los Angeles area. Each of our conventional markets is located near defense plants, airports and other businesses which operate around the clock. People who work in these businesses during the night patronize our store because they can shop there on their way to or from work, and they never have to think twice about whether or not they will find our stores open. Also, we try to make our stores interesting by offering a large variety of products and special services which our experience shows are likely to attract customers.

In all of our locations, we have competed successfully with stores operated by this area's larger chains, and I believe that any smaller concern can compete successfully with the chains. Two examples, I think, will demonstrate this. First, I have mentioned that a Ralph's store one-half mile away from our Burbank store and on the same street recently closed its doors. Both this Ralph's store and our store had the same competitive opportunity to serve the same customers. Our physical plants, parking facilities and the like were comparable. If anything, the Ralph's store was more modern than ours. Our Burbank store is successful and continues to achieve higher sales volumes as time passes. The Ralph's store apparently was not successful. If Ralph's had any decisive advantage over us by reason of the fact that it is a large chain, or otherwise, our success and Ralph's failure in the same community would not have occurred.

Second, the Mayfair Market near our Culver City store is a large, modern and attractive supermarket in a shopping center. In terms of its physical plant, location and available parking, it is far superior to our store. Mayfair kept this store open until only 9:00 P.M. or so until we commenced operations on a 24 hour a day basis nearby. Ultimately, Mayfair switched to a "We Never Close" policy in its Culver City store. I am sure this move was made because

we were taking potential business away from Mayfair and they found it necessary to meet the competition we were offering by imitating one of our chief competitive attractions. However, we have experienced no decline in business since Mayfair instituted their present policy.

Many other examples could be cited not only from our experience but from the experience of many other, smaller grocery concerns in Los Angeles. There is just no question in my mind that smaller concerns can and do compete effectively against chain stores.

One of the principal reasons for this is the existence of buying cooperatives such as Certified Grocers and Orange Empire Co-op. We are members of Certified and through it can buy groceries as cheaply as any chain. I have read the statement of the testimony of Lloyd E. Allen, who I have been told will be a witness for the government in connection with its action against Von's and Shopping Bag. I note that Mr. Allen apparently believes that some chains have an advantage in buying and distribution because they operate their own warehouses and distribution systems. It is my opinion that they hold no such advantage and that my company's groceries are placed on the shelves of our stores at no greater cost to us than in the case of direct buying chains. I believe that some larger chains operate their own warehouses and distribution systems because their size and number of stores create problems in buying and distribution that are so unique and complex that they must be dealt with directly by the chain, rather than through a buying cooperative. But smaller concerns do not have these problems, and Certified can very adequately serve them at no greater cost than the chains must ultimately pay. If an example is needed to support my contention in this respect, I can point to the fact that the groceries which we profitably sell in White Front discount houses at prices below those charged by chain stores are purchased by us from Certified.

I also note that Mr. Allen states that chains with their own warehouses and distribution systems have an advantage over smaller concerns "in terms of inventory control." All I can say to this is that if any grocer with one, two or three stores can't control his inventory, he shouldn't be in the business. The larger chain needs highly developed inventory control systems to deal with the problems which

necessarily arise in a large organization but which smaller concerns never should have to face.

Smaller concerns also have advantages over chains in that the small grocer can personally supervise his business. He does not have to run his business through supervisors or by bulletin. From my own experience, I know that I can make some changes in my store in one day which it would take a chain 3 to 5 days to make. I can also get key products on my shelves more quickly than in the case of a chain.

Also, if the Boy Scouts or some other organization in Burbank or Culver City wants to ask our help in connection with some project, they have only to knock on our door. On the other hand, if they want Von's help, they have to go to the company's general offices in El Monte or if they want to contact Alpha Beta, they have to go all the way to Orange County. Therefore, they almost always come to us, and through these contacts and by helping them out, we gain friends and customers.

The statement of Mr. Allen's testimony also contains remarks concerning the inability of smaller concerns to get into more desirable shopping centers. This may be true, at least in many instances. But I am personally of the view that shopping center locations are not always the most desirable market locations. We are doing all right, and we do not have any stores in shopping centers. In fact, every one of our conventional markets is located in an old building and either was unsuccessfully operated under another management or would be regarded by most grocers as being undesirably located. There is no doubt that our stores are not in the best locations, but we have overcome disadvantages of location by good merchandising and hard work. Moreover, if in the future we desire to expand our business by opening new stores, I am sure that we can find adequate locations from which we can conduct a successful business, and I am also sure that other small concerns can do the same.

There is another aspect of Mr. Allen's testimony which strikes me as being worthy of comment. Mr. Allen's remarks seem to me to be an attack on chains in general. Mr. Allen is apparently concerned with possible future mergers, possible dominance of the area by chains and what he regards as a tendency to monopoly. In my judg-

ment, Mr. Allen's apprehensions are entirely misplaced. I know for a fact that an independent can compete successfully with the chains because it's been done. I've done it myself, and I didn't work any miracles, I just worked hard. Chains and mergers such as the merger of Von's and Shopping Bag should not be feared by any small grocer who knows what he is doing. And as long as this ability to compete and the opportunity to succeed exist for the small concern, as it does, I do not see any possibility of monopoly or any sort of domination of this area's food business by one or more large concerns.

Finally, Mr. Allen's testimony does not make any reference to discount houses, and I believe that this is a significant omission. In 1960, there were very few discount houses selling food in Los Angeles and Orange Counties. Today, I would estimate that there are at least 35 N.G. of them. In my opinion, the emergence of discount houses with food departments may well mark the commencement of a new era in food distribution, an era which may result in as many changes in food retailing as occurred with the advent of the supermarket. The discount sale of food has already been successfully undertaken by many conventional supermarket operators, including my company. The discount house offers a whole new area of opportunity for both large and small concerns.

Like most successful merchandising techniques, the discount houses have a simple and direct appeal. They sell food cheaper than most supermarkets do. By eliminating trading stamps, overtime labor and other overhead costs, a discount food operator can afford to sell his products at prices which are 4 to 5% below prevailing supermarket prices. This attracts price conscious customers. Today, most discount houses are divided up into independently operated concessions. In most cases, the food department is run by one company, hard goods are sold by someone else and soft goods are sold by another, all under one roof. The time will come, as it did in the case of conventional grocery stores, when one company will operate all the concessions. These and other changes are undoubtedly going to occur in discount merchandising, and because this new form of competition is already and will be in the future a cause for genuine concern among conventional grocers, we can expect

changes to occur in their methods of doing business in order to meet the competitive threat of discount houses.

These foreseeable changes will undoubtedly give rise to new opportunities, new problems and new faces in the grocery business. It seems to me that today's grocer must stop worrying about a merger such as Von's and Shopping Bag's, which in my opinion cannot possibly effect his business, and stop worrying about monopolies or chain domination, which is not going to occur anyway, and start planning now to meet and take advantage of the changes and widening opportunities which have characterized the grocery business in the past and which most certainly will exist in the future.

Nathan Gilbert

Subscribed and sworn to before me, this 18th day of February, 1963.

William Barr, Notary Public, for the County of Los Angeles, and State of Calif., [Seal.]

My Commission Expires August 29, 1966, — Western Ave., Los Angeles 4

AFFIDAVIT OF MARCUS L. GODFREY, JR.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

MARCUS L. GODFREY, JR., being first duly sworn, deposes and states as follows:

I am the president of El Rancho Markets, Inc. which owns or leases and operates three supermarkets located, respectively, at 1101 W. Huntington Drive, Arcadia, California, 1401 Huntington Drive, South Pasadena, California, and 320 West Colorado Boulevard, Pasadena, California. My company opened the Arcadia market in 1948, the South Pasadena market in 1960, and the Pasadena market in late 1962. Each of these markets is large and attractive, and in each of them we stress convenience to the customer, attractive display, good quality foods, fair prices and friendly service.

I got my start in the grocery business by acquiring the grocery concession in a grocery store in the City of Long Beach in 1939. I sold this interest in 1941 after opening up a grocery store in Huntington Park. After 1950, my associates and I operated a grocery store in Pomona, California, and the grocery concession in Farmers Market in Pasadena, California, all of which we have since sold to others.

The business of our company has been and I fully expect that it will continue to be successful. We have been able to and we expect to continue to compete successfully with the stores of the various larger chains. For example, in 1960 Safeway opened a new store at Rosemead and Huntington, three blocks west of our Arcadia store, and in 1961 Ralphs opened a new store at San Gabriel and Huntington, about one mile west of our Arcadia store. Obviously any new store opening in the trading area of another store takes some business away, but at the same time the population in the area of our Arcadia store has been increasing, and our style of operation has individuality, so that the sales of our Arcadia store have increased.

Our South Pasadena store faces competition from, among others, new stores of Pantry, Market Basket, Safeway and Von's. Nevertheless the sales of our South Pasadena store are reasonably satisfactory and profitable.

Because of the existence of Certified Grocers of California, the largest retailer-owned cooperative grocery buying organization in the world, in our area the single store operator or small chain, such as ours, can obtain his groceries laid into the store at prices just as good as those obtained by the large direct-buying chains. Certified does an outstanding warehousing and distribution job so that the Certified member does not have to do much warehousing of his own. I have no doubt at all that if it were not for the existence of Certified the single store operators and small chains in this area would find it difficult to compete and would tend to go out of business.

Certified does not handle produce or meat. I do not know whether we buy our meat as cheaply as larger chains, but I doubt that the larger chains obtain much, if any, price advantage on such purchases. I believe we do better than the larger chains in the purchase of produce, because we buy in

the Los Angeles produce market, whereas the larger chains with their much larger requirements must field-buy and contract in advance for their produce needs. The Los Angeles produce market is a fluctuating market and we have skilled buyers who get us the best price and quality and make good use of our large refrigerated storage facilities to handle advance purchases. I believe our three-store chain is a good size for produce buying and competing. We can, for example, buy 100 lugs of tomatoes, a quantity which would mean nothing to a large chain, at the right time and do very well from a price and quality standpoint. Quantities of this type are often available on the Los Angeles market at advantageous prices.

The large chains do have an advantage in getting choice sites in new shopping centers, because the developer can get better financing with a tenant with an AAA credit rating. I am sure that Von's and Shopping Bag both had such ratings, so the merger did not give Von's any advantage in this respect. I believe the merger of Von's and Shopping Bag was a compatible one and in my opinion it poses no threat to competition or the existence of the many other grocery concerns doing business in this area.

Marcus L. Godfrey, Jr.

Subscribed and sworn to before me this 22nd day of January, 1963.

Melvin J. Meier, Notary Public in and for said County and State, [Seal.]

My Commission Expires March 5, 1966.

AFFIDAVIT OF JOE B. GOODNIGHT

STATE OF CALIFORNIA,

County of Los Angeles, ss:

JOE B. GOODNIGHT, being first duly sworn, does hereby depose and state as follows:

I am the President of an independent supermarket grocery concern which is named Michael's Markets, Inc. I caused this corporation to be organized in December 1959. Its first grocery store was constructed in 1960 and it opened for business at 764 North Tustin Avenue, Orange, California, on July 28, 1960.

1. Prior Experience in the Grocery Business

I am 44 years of age. In 1939 at the age of 21 I was employed by Alpha Beta Food Markets, Inc. as a butcher in the meat department. I remained in the employ of Alpha Beta until late in 1959 when I voluntarily resigned in order to start my own grocery business. During my employment with Alpha Beta I held successively the following positions: butcher, meat department manager, store manager, packing plant manager, general sales manager, and finally assistant to the president. The long training and experience I obtained as an employee of Alpha Beta have proved invaluable to me in making a success of my own business. Mr. Edwards, the President of Alpha Beta, while expressing regret at my resignation, nevertheless greatly encouraged me in my desire to start my own business. I am only one of a number of independent grocers in this area who have "graduated" from employment with Alpha Beta (or one of the several other major chains) into ownership of our own business. The training and experience gained in such employment makes it possible for one, such as myself, to become a successful independent operator.

2. Growth of my Company

My first store (and headquarters offices) was opened July 28, 1960. This store, located at 764 North Tustin Avenue in Orange, California has a total of 15,020 square feet,

with 9,500 square feet in sales area. Our offices have since been moved to 436 South Glassell Avenue in Orange. In August 1961 my company commenced construction of a second store which was opened November 14, 1961 at 3400 East Chapman in Orange, California. In September 1961 my company purchased a market at 1008 East 17th Street in Santa Ana, California, and in February 1962 we purchased the Low Cost Market at 330 South Main Street in Orange, California. We opened our fifth store July 18, 1962, located at 611 East Grand in Corona, California. We were able to purchase the Santa Ana market and the Low Cost Market because they were offered to us, and because they were not profitable for the former owners. On October 15, 1962 we also purchased Grand Groceries, Inc., who operate two stores in Riverside, California. This company was offered to us because of the age and health of the former owners. Since 1960 we have been able to build or acquire a total of seven supermarkets, and we are now operating at a profit.

3. Competitors in the Area of my Company's Stores

Name of Company	No. of stores in Our Area
Alpha Beta	6
Safeway	3
All-American	1
Food Giant	1
Patton's	1
Walker's	1
Market Basket	3
Smith Bros.	1
Alexander's	1
Stater Bros.	5
Sage's Complete Markets	2
Mayfair	2
Ralphs'	1

Plus a host of small "Mom & Pop" markets.

4. Ability of the Single Store Operator or the Small Chain to Compete

My company is a member of the Orange Empire Co-op which, although slightly smaller than Certified Grocers, another local cooperative buying organization, gives me all of the purchasing advantages enjoyed by any of the larger, direct buying chains, such as A & P, Safeway, Ralphs, Alpha Beta and Von's. As strange as it may seem to an outsider, the fact is that, by virtue of my membership in Orange Empire, the larger chains have no price advantage over me. And this is also true as to any other small operator who is a member of either Orange Empire Co-op or Certified Grocers, whose combined annual volume exceeds \$750,000,000.

On the basis of my twenty years of experience with Alpha Beta I concluded, and in my own operations since 1960 I have been able to demonstrate, that the able and aggressive single store operator or small chain can out-compete the large chain and has a distinct advantage over the large chain in flexibility of decision, opportunity to establish friendlier and closer ties with the customer and the community, and control of costs.

It is true that Orange Empire does not handle meats or produce, but the intelligent and able single store or small chain operator is not at a disadvantage in the purchase of these commodities. We can and do purchase meat just as favorably as any of the chains in terms of both price and quality. This is because we do not have to buy in large quantities and we are therefore in a position to help out the meat packer who is frequently left with a small quantity, such as 50 rounds, for example. A large chain would not be interested in purchasing such a small quantity and the packer will usually make us a favorable deal so as to dispose of the meat. This is likewise true in produce—for the same reasons. We can and do purchase produce at prices and quality every bit as favorably, if not more so, as any of the large chains can purchase its produce.

5. The Von's-Shopping Bag Merger

Obviously the Von's-Shopping Bag merger in March of 1960 did not discourage me from opening my first store in July of 1960 or from thereafter expanding, nor could it. Actually it is my personal opinion that the larger a chain becomes, the softer a touch it becomes for the aggressive small operator. Competition in the retail grocery business consists of many things, including price, courtesy, friendliness, convenience and flexibility. The merger did not give Von's any advantage over its many rivals in any of these aspects of competition. There is no doubt in my opinion that my company and as well any of the hundreds of other chains and strong independents can compete very successfully with Von's. From my own experience in the grocery business I am absolutely certain that the merger has not had and will not have an adverse effect on the very vigorous competition which has prevailed and still prevails in the grocery business in this area. I am equally certain that because of the existence of strong cooperatives such as Orange Empire and Certified Grocers there will continue to be for the foreseeable future many hundreds of strong independents and small chains to compete successfully with the several larger chains for the consumer dollar in this expanding market. There is no possibility whatsoever, in my opinion, of any undue concentration or of any chain or any group of chains dominating this market area. Anyone who would say otherwise just doesn't know anything about the grocery business in this area, in my opinion.

Joe B. Goodnight.

Subscribed and sworn to before me this 26th day of October, 1962.

Loisann Derr, Notary Public in and for said County and State, [Seal.] My Commission Expires Nov. 12, 1965.

AFFIDAVIT OF YOSHI INADOMI

STATE OF CALIFORNIA,

County of Los Angeles, ss:

YOSHI INADOMI, being first duly sworn, does hereby depose and state as follows:

My father and I operate two retail grocery stores in East Los Angeles under the name JonSons Markets.

In 1923, my father, John Inadomi, opened a grocery store in Fillmore, California. Prior to World War II, the firm expanded and operated grocery stores elsewhere in Ventura County, California. I began working in these stores at an early age. Later, I attended the University of Southern California and Drake University in Des Moines, Iowa, where I graduated with a degree in marketing and economics. Following my graduation, I spent two years in the Army.

I returned to Los Angeles in 1946. My father, my uncle and I purchased a small grocery store called the Brooklyn and Ford Market at 4500 Brooklyn Avenue in East Los Angeles. In 1952, we opened a second store, the First Street Food Center, at 3650 East 1st Street in East Los Angeles. My father, my uncle and I still have an interest in those two markets which are, comparatively speaking, quite small.

In 1959, however, my father and I decided to branch out on our own and with the profits we had made from our two small markets, and the aid of outside financing, we acquired the land at 2432 Brooklyn Avenue in East Los Angeles and built a 13,000 square foot supermarket at that location. This was the first new building erected in the Boyle Heights area of East Los Angeles in approximately 30 years, and it marked the beginning of JonSons Markets. In 1960, JonSons Markets, Inc. acquired a market from Alpha Beta at 4831 Whittier Boulevard in East Los Angeles. That market is 20,000 square feet in size. It is my belief that that store was not doing a profitable business under the management of Alpha Beta, but since we have taken over the store, we have done quite well, and our business is a profitable one.

We are members of Certified Grocers of California, Ltd., and I credit our membership in that organization as being one of the principal factors leading to our success, since through Certified we are able to obtain grocery products on terms as favorable as any of the direct buying chains. Also, we have taken advantage of other services extended by Certified. Certified has developed a data processing system which we have installed in our store, and which I regard as an invaluable asset. It provides us with reliable statistical information from which we can determine how our business is operating, and what direction our efforts should take in the future. We rely upon these statistics very heavily since I am of the view that the control of any business with the aid of an analysis of statistics is an essential to success these days.

Our stores face competition from many of the major chains in this area, most notably, Safeway, Food Giant and Von's. We also face aggressive competition from a number of stores operated by independents. We have been able to meet this competition and to succeed. I believe that we are aggressive competitors and that our merchandising techniques are sound. Most of our personnel have been trained by us personally. Many of them have begun with us as box boys.

We have instituted and maintained a more or less aggressive advertising campaign. We advertise in community papers, and we place advertisements on benches and bus cards as well. Because our markets serve a large Mexican population, we also advertise on local Spanish speaking radio stations.

JonSons Markets, Inc. is a shareholder in Golden Creme Dairies. Golden Creme is a corporation whose stockholders are retail grocery concerns in the Los Angeles metropolitan area. I serve on the Golden Creme Board of Directors. In all, Golden Creme has approximately 80 shareholders ranging in size from Food Giant, which operates approximately 50 stores in the Los Angeles metropolitan area, to a number of single store operators. JonSons Markets feature Golden Creme products. Golden Creme is an organization not unlike Jersey Maid, although Jersey Maid is a dairy owned by a fewer number of retail grocery concerns.

Based upon my experience, I am of the view that any hard working and able independent grocer can compete successfully with the chains. About the only handicap or disadvantage which an independent faces is in terms of capital. Naturally, the larger chains, and I think specifically of the national chains such as Safeway, have tremendous financial resources at their command, which they can use in the acquisition of new locations and otherwise. The independent on the other hand, has a very difficult time accumulating capital. For every dollar that he makes and wishes to put away, the government takes 50¢ of it by way of taxes. As a result, it is very difficult for an independent to expand to the point where he can afford to acquire good new locations. Also, it is difficult for an independent to acquire a shopping center location because developers have found that they can obtain much better financing terms if they rent their store space to a larger concern with triple A financial ratings. Perhaps this disadvantage could be eliminated if the government were to guarantee the leases of smaller concerns which had, through the operation of smaller stores, demonstrated a proven ability to establish and maintain a successful grocery business.

I have been asked by the attorneys for Von's Grocery Co. to express an opinion as to the effect of the merger of Von's and Shopping Bag on various aspects of the retail grocery business in the Los Angeles metropolitan area. Personally, I am of the view that the merger has nothing whatever to do with the disadvantage at which an independent finds himself in the accumulation of capital or the acquisition of new store locations. There is simply no relationship so far as I can see between the merger and this situation. Secondly, I do not believe that the merger of Von's and Shopping Bag has affected competition in any way. It has neither decreased nor increased competition. Our stores are in competition with stores operated by Von's, and so far as I can tell, there has been absolutely no change in the nature or character of that competition since the merger. In short, the merger of Von's and Shopping Bag, in my view, has not and could not adversely affect my business or competition generally in grocery retailing.

Yoshi Inadomi.

Subscribed and sworn to before me, this 11th day of Jan., 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF ARTHUR C. JONES, JR.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

ARTHUR C. JONES, JR., being first duly sworn, does hereby depose and state as follows:

I am 41 years of age and President of Piggly Wiggly California Company. I am also President of Southern California Grocers' Association, and the President of National Piggly Wiggly Operators' Association, comprising 1600 stores in 38 states. My father, Arthur C. Jones, Sr., now deceased, held this same post 35 years ago. I grew up in the grocery business under the instruction and direction of my father. I started stocking shelves when I was 11 years old, in one of Dad's markets on 44th and Western Avenue in Los Angeles. Dad paid me 25¢ a day, and because my grandmother thought I wasn't being paid enough, she gave me another 25¢ per day. This "under the table" payment was necessarily kept secret from Father, who was never accused of over-paying anybody. I succeeded my father as President of Piggly Wiggly California Company in 1957.

Father had started in business in 1920 with one store in Los Angeles. He built this up progressively to a chain of 220 stores by February of 1929. He sold all of these stores to Charles Merrill, who subsequently sold them to Safeway. I believe this was the time when Safeway commenced doing business in California, at least in the Los Angeles area. After that, Father owned and operated the Chapman Ice Cream Company for about three years; then he went to New York as President of the Ridgeway Tea Company. He

also became President of James Butler Grocery Company of New York, which operated 485 stores. During Father's tenure of office, most of these stores were sold to store managers and thereafter operated as individual stores. Father was also President of Bob White Frosted Foods, Inc., and during the last war, served with the Government as O.P.A. Director in Dallas, Little Rock and New Orleans. He started the present Piggly Wiggly California Company in 1949 and had opened up and was operating five stores at the time he passed away in 1960. I have succeeded to substantial ownership of the business and now operate eight stores and hope to open two more in the next year and a half.

Competition With Von's and Others

At the present time we have five stores in the San Fernando Valley in direct competition with either a Von's or Shopping Bag store. These five are in Tujunga, Sunland, San Fernando, Reseda and Van Nuys. Two of the five Piggly Wiggly stores were in operation before the Von's merger, and the other three were acquired subsequent to the Von's merger. Both before and since the Von's merger, I considered Von's and Shopping Bag normal competitive operators. Competition between my stores and Von's has not increased or decreased since the merger; the merger has simply not affected my business in any discernable respect. Since the merger, my business has been affected and competition has increased by reason of new stores and other competitors moving in, but the Von's merger had nothing to do with it. The new Gelson store, a few blocks from me on Ventura, is the toughest competition I have. I have plenty of worries over what this two-store outfit is doing. But they had better worry about me too, for I am operating a supermarket near them, that is in my opinion the finest supermarket in the United States of America.

New Entrants Into the Grocery Business

The attorneys for Von's have asked for my opinion as to whether or not independent operators can get started in the grocery business in the Greater Metropolitan Area and thereafter compete successfully with the chains. My opinion is that they can get started providing the new-comer is

smart enough to pick a good location for a modern store. By "modern store" I am referring to the phenomenal small markets like Speedy Marts, as well as the supermarkets. The new-comer, having then established himself in a modern store, is in an excellent competitive position in so far as chains are concerned, for the following reasons: He becomes personally acquainted with a large number of his customers; he becomes a better merchandiser; he generally can and does work longer hours; being constantly on the job, he is able to make decisions on the spot and is able to better control his help; he is always completely in touch with what his competitors are doing in the immediate neighborhood and is able to make day to day changes in his operation to keep abreast of this competition; he draws all his trade from this immediate neighborhood and doesn't have to concern himself with what stores are doing on the other side of the county; having personal acquaintance with his customers, he can tailor his operation to the individual customer, whereas chains cannot do this nearly so well, and certainly not as quickly.

In the last five years I have seen a large number of small markets start up like Speedy Marts. They are absorbing an increasing volume of business, and have some additional competitive advantages. They occupy about 2200 square feet or less. They open at 7:00 A.M. and run until 11:00 P.M. Generally they are a family operation, and they can select locations in crowded areas convenient to apartment dwellers, which locations are not available to chains operating stores of the supermarket variety. Rents are materially lower in comparison with supermarkets. They do not handle fresh meat or produce. They can and do, as members of a co-operative, buy at prices as favorable as can be obtained by chain operators. One big advantage is that they have no union labor and no labor troubles. These markets are one area in which independents with limited capital have a wide open opportunity to establish a profitable business. I have been informed that there are over 100 of these markets in the City of Dallas, Texas and they are spreading rapidly in all great population centers. Some of them do as much as \$10,000.00 per week. It is the new modern version of the old "Mom and Pop" grocery store. Indi-

vidually and in the aggregate, they are destined to become big time competition in the grocery business.

In conclusion, I can flatly state that it is my opinion that the Von's-Shopping Bag merger has had no effect whatsoever on my business and that the merger has neither increased, decreased nor changed competition between us in any respect.

Arthur C. Jones, Jr.

Subscribed and sworn to before me this 19th day of January, 1963.

John DeBellis, Notary Public in and for said County and State, [Seal.]

My Commission Expires Dec. 4, 1966.

AFFIDAVIT OF A. J. MILLER

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. J. MILLER, being first duly sworn, does hereby depose and state as follows:

I am president of Tiny Tim Markets, Inc., a retail grocery concern operating three small grocery stores in Orange County, California. Also, I am a past vice president of the Southern California Retail Grocers Association.

I have been active in the grocery business from time to time since the days when I was a school boy working in a grocery store in Hammond, Indiana. In later years I worked for Jordano Brothers, a retail and wholesale grocery concern operating in Santa Barbara, and I later worked for Haas-Baruch Co. and Crown Products Co., both of whom were suppliers of grocery products.

In 1948, I entered into a partnership with Joseph Eannareno and we opened up a grocery store called the Grand Market in Santa Ana. This market was successful enough to permit us later to open a second market called the Value Market in Anaheim. In 1952, Mr. Eannareno purchased my

interest in the partnership, and I formed another partnership to operate the Certified Market in Santa Ana.

The Certified Market was a tremendous success. We remodeled and expanded the market on two occasions between 1953 and 1958. I sold my interest in this market in 1958 in order to commence my present business, the operation of Tiny Tim Markets, as sole owner.

Tiny Tim Markets began in 1958 with one small store at the corner of Newport and Irvine in Tustin, California. We later built two additional stores in small shopping centers in Santa Ana. Recently, we have acquired a fourth store in Buena Park, which we will convert into a Tiny Tim Market.

All of the Tiny Tim Markets are so-called superettes in that they are smaller than a supermarket. On an average, they have about 4000 square feet of selling space as compared to the Certified Market, for example, which had 15,000 square feet. However, we carry a full selection of grocery products in Tiny Tim Markets.

The keynote of our merchandising policy at Tiny Tim has been cleanliness, courtesy and friendly service. I have always tried to let the customer know of my gratitude for his patronage. When I was operating Certified Markets, I would often stand at the door, shake the hands of my customers as they entered, make a point to call them and their children by name, and personally thank them for coming to our store. I tried, and still do, to play a real part in my customers' lives. Whenever I would learn of a new addition to the family of my customers, I would arrange to have flowers sent to the mother's bedside in the hospital; and while a continuation of this specific policy now that I am operating three stores is impossible, I still stress to my employees, and practice myself, the philosophy of courteous, friendly, personal service.

The employees we have chosen for Tiny Tim Markets are, I believe, of the highest caliber. I believe that in the last analysis it is the people working in a store who attract the customers. I will not tolerate any employee who demonstrates in any way a lack of integrity or who does not maintain a good personal appearance, or does not extend the sort of courtesy and friendliness which is required. Our male employees all wear red vests instead of aprons in our

stores, and we try in any other way possible to make Tiny Tim Markets a pleasant and attractive place to shop.

When I went into the Tiny Tim Markets venture, I was convinced that there was a place for smaller grocery stores in Orange County. I am confident that there are a significant number of people who prefer to shop in a smaller store as opposed to a large supermarket. Some other operators who have superettes or bantam stores feel that they can attract only those customers who wish to make a quick purchase of an item which they have run out of at home, and they believe that the same customer will go to a supermarket to make her large purchases. I disagree with this point of view. I think there are many people who prefer to do all of their shopping at a clean, attractive smaller store. The success of Tiny Tim Markets has, I think, demonstrated the correctness of my views.

I also feel strongly that a grocer owes a duty to the community he serves to become active in community affairs. I believe that community service brings in customers who learn to know and appreciate the fact that here is a business man who is really a part of their lives. I have been active in the Boys Club of Santa Ana, a member of the board of directors of the Orange Empire Boy Scouts, a past director of the Boy Club of America of Santa Ana, Chairman of the underprivileged children's committee of Kiwanis of North Santa Ana, a trustee of the Santa Ana Board of Education, first commander of the Ambassador Club of the Chamber of Commerce, chairman of the membership committee and a member of the board of directors of the Chamber of Commerce, a member of the National Chamber of Commerce, a past member of the Santa Ana Rotary Club, a member of the Elks and Knights of Columbus, and President of the Americanism Educational League. I have received the Golden Neighbor Award in Santa Ana, and in 1956, I was named Kiwanian of the Year. My activities in community affairs have greatly enriched my life. They have also made my name and the name of my stores well known in Santa Ana.

I believe that there is a tremendous competitive opportunity available in this area for independents and smaller grocery concerns, whether they operate supermarkets or superettes. Through membership (which we have) in co-

operative buying groups such as Certified Grocers of California, the smaller concern is able to buy its groceries as cheaply as any chain, and by stressing merchandising techniques adapted to fit the needs and desires of the particular community which he serves, the independent can do just as well as anyone in the food industry.

The proof of these statements can be found in the success of countless independents in Los Angeles and Orange Counties and elsewhere. For example, I think immediately of a man named Fred Walker, who operates a small grocery store near the corner of 17th Street and Tustin Avenue in Santa Ana. Mr. Walker had operated this store for a number of years quite successfully. A few years ago, Alpha Beta opened a huge supermarket in a very large shopping center almost directly across the street from Mr. Walker's store. As the Alpha Beta was being built, I heard many people say that Mr. Walker's days in the grocery business were numbered, at least at this location. But Mr. Walker is a very good grocery man and he did not quit. I know for a fact that today Mr. Walker is doing just as well, if not better, than before the Alpha Beta Market opened across the street from him.

There is also a tremendous opportunity for small concerns to grow. Tiny Tim Markets is an example of the ability of smaller concerns to expand. Another very good example with which I am quite familiar is Michael's Markets. Joe Goodnight, the founder and president of Michael's Markets, was for a long time an employee of Alpha Beta. He is one of the best grocery men I have ever met. In 1959, he branched out on his own and commenced the Michael's Market chain. Today, Michael's Markets is a 7 store chain operating very successfully in the Orange County area.

There is no doubt in my mind that competition is intense in the grocery business in Los Angeles and Orange Counties. Indeed, I think "intense" is probably an understatement of the vigor of competition in this business. But I, for one, like the grocery business just the way it is. I am stimulated and exhilarated by competition, and I believe that I have the ability and experience to compete successfully against independents or chains. I am sure there are many people operating smaller concerns who have the same feeling. Under these circumstances, I do not see how the chains

ever dominate the grocery business in Los Angeles, and I certainly see no threat of monopoly.

I understand that the Federal Government has commenced an antitrust suit challenging the legality of the merger of Von's and Shopping Bag. In my opinion, that merger had absolutely no adverse effect on competition. I also understand that the Government has contended in this case that smaller concerns are at a disadvantage in obtaining desirable shopping center locations. It may be true that in some instances the small concern has a more difficult time than a larger chain in finding a shopping center location, but in my own experience, I have had no such difficulty. Today, the chains seem to be interested in the very large shopping centers, and there are many sites available which do not meet their requirements and which, I have found, are available to a grocer who wants to operate a smaller store in a smaller shopping center. Two of my three stores are in shopping centers now. Just last week, a friend of mine who owns a good deal of property in Orange County asked me to look at some of his property to determine whether or not any of it could be developed into shopping centers, in which incidentally, he wanted Tiny Tim to operate a grocery store. We spent one day looking at his property. We saw no less than eight separate sites which could very well be adapted to a shopping center development. The one which was the most attractive to me was at the corner of Valley View and Chapman in Garden Grove, directly across the street from a larger shopping center in which Thriftmart is operating a supermarket. We have decided to make some preliminary plans to determine whether a shopping center could feasibly be located at this corner, and if those plans look promising, I am sure that within the near future Tiny Tim will open its fifth market at this location.

A. J. Miller

Subscribed and sworn to before me, this 19th day of February, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF O. J. SCHOEN

STATE OF CALIFORNIA,

County of Los Angeles, ss:

O. J. SCHOEN, being first duly sworn, does hereby depose and state as follows:

I am 59 years of age and Executive Vice President of Piggly Wiggly California Company. I joined this company in 1960. I started in the grocery business in 1924 in Louisville, Kentucky as an inventory stock control clerk for Atlantic & Pacific Tea Co., Inc. I also worked in the warehouse and in stores as a routine clerk and stayed in Louisville about two and a half years. I then was transferred to Detroit as Assistant Office Manager. The Detroit operation of A. & P. in 1927 was 550 stores and I worked in this area for about two and a half years. In 1930 A. & P. decided to open stores on the Pacific Coast and I was transferred to Los Angeles as Assistant Office Manager. I became Office Manager in the Los Angeles area in 1936, and in 1939 I also took charge of the grocery warehouse, produce warehouse, and of transportation. I later became assistant to Vice President, George Higi, in charge of all operations. In 1950 I was appointed General Superintendent and given complete charge of all A. & P. stores in California, succeeding Mr. Higi. In 1953 I resigned to become Executive Vice President and General Manager of Piggly Wiggly stores in San Diego, and at present I am Executive Vice President of Piggly Wiggly California Company. Also at the present time I am President of Western Association of Food Chains, Vice President of National Association of Food Chains, and Director of Food Employers' Council of Los Angeles. I was Charter President of San Diego Food Employers' Council.

Since coming to Los Angeles in 1960 I have had an opportunity to become acquainted with the competitive picture between the various grocery chains and between independents and grocery chains. It is my opinion that competition has generally and substantially increased throughout Los Angeles County. One important reason for this is the substantial increase in the number of discount houses sell-

ing groceries. With less desirable and cheaper locations, less union labor, and with less administrative overhead, discount houses are able to operate on a small profit margin, which they hope will be off-set by volume sales. One of the keys to a successful supermarket operation is the selection of a prime location. This is generally true also of an independent. An independent who desires to get into the grocery business and has had some training, is just as able to pick out a prime new location as some executive in a chain store operation can do.

Based upon my observation since 1960, it is my opinion that the Von's merger has not substantially changed the competitive picture with Piggly Wiggly stores as it existed prior to the merger. It is also my opinion that the Von's merger has had no effect on competition in relation to any other chain or independent operating in Los Angeles County.

O. J. Schoen

Subscribed and sworn to before me this 11th day of January, 1963.

Gladys M. Smith, Notary Public in and for said County and State, [Seal.]

My Commission Expires Oct. 30, 1963.

AFFIDAVIT OF DANIEL H. WILSON

STATE OF CALIFORNIA

County of Los Angeles, ss:

DANIEL H. WILSON, being first duly sworn, does hereby depose and state as follows:

I am Vice President in charge of operations for Crawford Stores, Inc. Crawford Stores, Inc. consist at present of six stores making annual sales of about \$15,000,000.00.

Grocery Background

I started in the grocery business in 1931 when just out of high school. My first job was for W. H. Crawford in Rosemead. For the first two months I worked six days a week,

from ten to twelve hours per day, and was paid only my room and board. At the end of two months I was given a raise and was then paid \$10.00 per week, plus my room and board. I was supposed to be a clerk, but spent most of my time sacking sugar and pink beans. At the end of the first year I was transferred to the store at El Sereno, and was given a \$2.00 per week raise. Gradually my salary was increased until I was getting \$20.00 per week, plus room and board, and this was what I was making at the time I became married to Mr. Crawford's secretary. She was working for Crawfords for \$5.00 per week, and resigned her job when we were married. As a wedding present Mr. Crawford increased my salary \$5.00 per week, the same amount he was paying his secretary.

In 1934 we opened the Glendale store and I was transferred there as Grocery Manager, and eventually became Store Manager. In 1942 I went into the service and after my discharge I held a succession of different jobs until 1951 when I re-joined Crawfords as General Supervisor. Then I was given the job of Assistant General Manager, and as I said, I am now Vice President in charge of operations.

Competition With Von's

Before the Von's merger, two of our stores were in direct competition, one with a Von's store on Valley Boulevard, and one with a Shopping Bag store on Whittier Boulevard in Montebello. We are still competing with the same two stores. Von's were always tough competitors and they still are. We never did consider the Shopping Bag store to be much competition and we still don't. We make 100% of our purchases from Certified and Spartan, and we think we buy as cheap as Von's. We also think we buy meat cheaper than Von's, because our supplier is always prepared to supply our requirement of a lesser number of carcasses in order to maintain our steady business. Big operators often have to go to several outlets to get their supply. Where we are charged the market price, suppliers can and often do charge big operators more because of the effort needed to meet the bigger quota.

Our stores vary in size from 12,000 square feet to 60,000 square feet. Like the big chains do, we hire union labor and

pay the union scale. Our prices are in line with prices charged by Von's, and we believe our store operating costs are on a par with those incurred by Von's. The last store we opened was in the fall of 1960 and despite competition that surrounds us everywhere, our sales this last year increased about 2%. It is my definite opinion that the Von's merger did not increase, decrease or make any change whatsoever in the competition existing between us at and prior to the merger. It is also my opinion that the merger had no effect on competition anywhere in Los Angeles County. Von's and Shopping Bag are still selling the same groceries to the same people from the same outlets, and generally in competition with the same competitors. From what I have seen, there has been no substantial, nor any change in this competitive picture since the merger was accomplished.

An Independent's Competitive Advantage Over A Chain Operation

I have been asked by Von's attorneys my opinion on the competitive advantages enjoyed by an independent grocer or one-ownership grocer in relation to a chain operation. In many respects a one-ownership operation has tremendous advantages over the chain operation. Some of these advantages are:

1. An independent can be much more flexible or fluid in buying supplies, advertising them and in pricing them.
2. The independent can make day to day decisions as problems arise, which cannot be so readily made by store managers in a chain.
3. An independent can and does keep in close touch with his customers. He knows their personal likes and dislikes and he caters to them whenever possible.
4. A one-ownership operation is in much closer and more personal contact with his employees and as a result, there is far less labor trouble between management and employees.
5. Then I believe he can operate more efficiently because he doesn't have to hire supervision and several different types of buyers; he can perform all these services for himself.

6. One big advantage enjoyed by an independent, or a one-ownership operation, is that he can reach his customers with "spot" advertising. General area-wide advertising by supermarkets does not reach customers as effectively as spot advertising does.

Daniel H. Wilson

Subscribed and sworn to before me this 11th day of January, 1963.

Philip A. Cain, Notary Public in and for said County and State, [Seal.]

My Commission Expires August 12, 1966.

DEFENDANTS' EXHIBIT AZ

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title Omitted]

AFFIDAVITS OF DEFENDANT'S INDUSTRY WITNESSES WHO
OPERATES TEN OR MORE GROCERY STORES

AFFIDAVIT OF SAM ALEXANDER

STATE OF CALIFORNIA

County of Los Angeles, ss:

SAM ALEXANDER, being first duly sworn, does hereby
depose and state as follows:

I am Chairman of the Board of Alexander's Markets, a corporation. My brother, R. E. Alexander, is President of the corporation and my son, Veryl Alexander, is Vice President and Assistant to the General Manager of Alexander's Markets.

1. Experience In The Grocery Business

My first experience in the grocery business occurred when I was employed in the year 1912 in the City of Edmond, Oklahoma, as a delivery boy for a grocer. I moved to California in 1919, and in that year I opened my first grocery store at 41st Street and Hooper Avenue in the City of Los Angeles. This was a 25' by 40' market which I ran until 1923 when I sold this store. I next took over the grocery section in what was then considered the "giant" 40' by 40' Peerless Market, located at 48th Street and Second Avenue in the City of Los Angeles. I sold my interest in the Peerless Market in 1929 and took over the grocery department in the Great West Adams Market located at West Adams and Virginia Road in Los Angeles in 1930. In 1931, I took over the grocery section of my present store at 4813 West Washington Boulevard in Los Angeles, and in 1940, I pur-

chased the entire operation of this market. The 41st Street and Hooper store and the Peerless Market which I have referred to above are both still standing and being operated as grocery stores by others. The grocery department at the South Arlington Drive-In Market at Arlington and Exposition Boulevard was opened by us in 1933. It has been opened and operated for a period of a year or so by others and then closed. We re-opened the store and ran it for five years and then sold it in 1938.

The next Alexander's market was opened in 1935 at 10th and Crenshaw. I sold it in 1937, but the store remained in operation in other hands until 1961 when it was destroyed by fire. In 1937, I opened another Alexander's Market at 3029 South Vermont Avenue. In 1940 I opened another Alexander's Market at 204 West Wilson Avenue in Glendale. In 1949 my company opened another Alexander's Market at 260 East Magnolia Boulevard in Burbank. From that time forward, Alexander's Markets has continued to grow and to expand. We now own and operate 12 supermarkets in the Los Angeles Metropolitan Area and we have three additional supermarkets under construction. A list of my company's markets, including the addresses and the date that each of them was opened, is as follows:

Store	Address	Date Opened
#1—Glendale	204 West Wilson Avenue Glendale 3, California	1940
#2—Vermont	3029 S. Vermont Avenue Los Angeles 7, California	1937
#3—Washington	4813 W. Washington Blvd. Los Angeles 19, California	1931
#4—Northridge	18426 Roscoe Boulevard Northridge, California	1961
#5—Burbank	260 E. Magnolia Blvd. Burbank, California	1949
#6—Valley Plaza	6355 Bellingham Avenue North Hollywood, California	1952
#7—Sunset	1601 North Vermont Avenue Los Angeles 27, California	1933
#8—La Canada	421 W. Foothill Blvd. La Canada, California	1956
#9—Azusa	273 E. Gladstone Avenue Azusa, California	1956
#10—Monrovia	328 W. Huntington Drive Monrovia, California	1957
#11—Baldwin Park	1640 N. Puente Avenue Baldwin Park, California	1960
#12—Tustin	550 East First Street Tustin, California	1961

Store	Future Locations Address	Date Scheduled to Open
#13—Van Nuys	5822 Sepulveda Boulevard Van Nuys, California	Nov. 25, 1962
#14—Encino	Ventura Boulevard between Newcastle and Zelzah Encino, California	—
#15—Tujunga	Foothill Boulevard and Marnice Avenue Tujunga, California	—

2. Ability of the Single Store Operator or Small Chain to Compete

When I first started in business in this area as a grocer there were three or four chain grocery stores which, because of their volume, were able to and did buy their groceries direct from the manufacturers. The rest of the grocery operators in this area, including myself, were not able to buy in sufficient volume to purchase directly from the manufacturers and we obtained our groceries from the old-line jobbers. This resulted in our paying from 10- to 15% more for our groceries than the direct-buying chains and placed the smaller groceries at a competitive disadvantage in relation to the chains. The only way that I and the other small operators could compete with the chains would be by being very friendly to the people in the neighborhood and emphasizing personal service. On the basis of my experience in the industry, however, I am convinced that if this disparity in purchasing power had continued it would have meant virtually the complete disappearance of all of the single store operators and small concerns and would also have meant that the many fine large chains which now exist in this area would not be in existence today. Fortunately, some farsighted smaller operators realized in the 1920's that in order to compete successfully it was essential that they be able to purchase their groceries at prices comparable to those received by the direct-buying chains and a number of these smaller grocers got together and agreed to pool their resources and buy directly from the suppliers. By this means they concluded, and correctly, they could have the advantages of quantity discounts and reduce operating costs. This was the beginning of cooperative buying in the Los Angeles area and it was so successful that in

1924 Certified Grocers of California, Ltd., was organized. Certified is a cooperative organization, all of the stock of which is owned by retail grocers who purchase their groceries from Certified. I am informed that Certified is the largest retailer-owned cooperative food wholesaler in the world. Certified has grown to the point where today its annual sales at wholesale to its members is approximately \$350,000,000.

Alexander's Markets became a member of Certified in 1928. I had the pleasure of serving on the Board of Directors of Certified Grocers for 25 years. I attribute a very large part of the success which Alexander's Markets has enjoyed over the years to its membership in Certified Grocers and from my experience in the industry, I am convinced that the growth of such other chains as Von's, Shopping Bag, Shoppers Markets, and many others has in large part been attributable to their membership in Certified. Similarly, the existence of Certified makes it possible for the ambitious and experienced individual who wishes to enter the grocery business today to do so and to compete successfully with any of the major chains.

While Certified Grocers does not handle meat or produce, this does not, in my opinion, place the single store operator or the small chain at any competitive disadvantage. I found from my own experience when I was running one or two stores that it was possible for the small operator to purchase produce and meats at comparable prices and with comparable quality to that which the larger chains purchased, and my buyers now assure me and from my own experience I am sure this is still true. This is because the meat packers frequently have small quantities of meat which they cannot sell to a chain (which must buy in large quantity). The packers are therefore willing to sell these smaller quantities to the small operator at a favorable price. This is likewise true in the purchase of produce. The small operator who does not need a large quantity can "wait the market out". By that I mean a large chain will frequently purchase, for example, 500 crates of lettuce, and it cannot, because of its large demands, wait to see if the market breaks a little. Also, the smaller operator is frequently able to help out the produce dealer by taking small quantities which the produce dealer might not otherwise be

able to sell and thereby obtain a real price reduction. The buyers for Alexander's Markets today tell me that this situation still obtains and from my background and experience in the business I am satisfied that it will always be true.

People have been predicting for many years the demise of the single store operator. This may be true in other areas of the country, but I do not believe there is the slightest possibility of it happening in the Los Angeles area because of the existence of Certified Grocers and another large cooperative buying organization known as Orange Empire. The single store operator has a number of competitive advantages over the stores operated by the larger chains, because he has the advantage of the personal touch with his customers, can respond quickly to competitive conditions, and can pay closer attention to his overhead.

Of course, there have been failures in the business, just as there have been failures in all lines of business. In my opinion, most of the failures in the grocery business in this area must have occurred because the person simply did not have the experience and ability to run a successful business. There have been failures of some of the larger chains as well, either for the same reason or because they tried to expand too rapidly with insufficient capital. It has been the consistent policy of Alexander's Markets to finance its expansion out of funds generated through profits and depreciation. I fully expect that Alexander's Markets will continue to prosper and to grow in order to serve the needs of an ever-expanding population.

I believe very strongly that there is a great opportunity in the grocery business for the conscientious and able single store operator. From my observation of the industry over the past 43 years, I believe that the great bulk of the successful independent operators got their experience in the business by working for a chain. I believe this is the best schooling possible for the man who wants to start his own grocery business.

3. The Merger Of Von's And Shopping Bag

I do not wish to give the impression from what I have heretofore stated concerning my success and the success of Alexander's Markets that it has all been easy. This is not the case. It took hard work, close attention to details, and a knowledge of the business. The retail grocery business in the Los Angeles area has always been highly competitive and it is today. The merger of Von's and Shopping Bag, in my opinion, has not had any adverse effect on competition in this area and I don't see how it possibly could have any effect. I have stated before that if it were not for the existence of the large cooperatives, such as Certified and Orange Empire, the large chain such as Safeway or Ralphs with its ability to get low prices because of purchasing large quantities would have an overwhelming advantage over the single store operators and the small chains, but Certified and Orange Empire, of course, buy in much greater quantities than any of the chains, including Safeway. By this statement I do not mean that competition in the retail grocery business is only price competition. What I do mean is that since the single store operator and the small chain can purchase groceries as favorably as the large chains, they are at no disadvantage, and I frankly feel that they can out-compete the large chains in terms of courtesy, convenience, flexibility and close attention to detail.

From my experience in the industry I am convinced that there is not the slightest possibility that any chain can dominate or control this market. Certainly Safeway, despite its importance in this area and its nation-wide operations, has never been able to control or to dominate the market. There is, and I am convinced there will continue to be, great opportunity for persons of ability and who are willing to work hard to enter the grocery business in the area and to prosper and grow. In my years in the industry I have seen very many concerns do just that. I am convinced that the growth of such concerns as Von's and Shopping Bag and the hundreds of smaller chains from single store operations is directly attributable first to membership in Certified Grocers and secondly to hard work, intelligence and ability.

There are now in this area, and I have no doubt whatsoever that there will continue to be, many hundreds of small chains and single store operators who compete successfully with the few larger chains for a share of an ever-increasing market. The merger of Von's and Shopping Bag, in my opinion, cannot have any effect on this situation. There is not the slightest possibility, in my mind, of any tendency toward a monopoly in retail grocery sales in the Los Angeles area.

Sam Alexander

Subscribed and sworn to before me this 26th day of October, 1962.

Anthony J. Dougherty, Notary Public in and for said County, and State, [Seal.]

My Commission Expires Sept. 19, 1964

AFFIDAVIT OF CLAUDE W. EDWARDS

STATE OF CALIFORNIA

County of Los Angeles, ss:

CLAUDE W. EDWARDS, being first duly sworn, does hereby depose and state as follows:

I am the President of Alpha Beta Acme Markets, Inc., successor to Alpha Beta Food Markets, Inc., a supermarket grocery concern operating supermarkets in the counties of Los Angeles, Orange, Riverside, San Bernardino, and San Diego, all in California. I became President of Alpha Beta Food Markets, Inc. in 1952. I have held the following positions in the grocery industry: President of Western Association of Food Chains, 1944-1947; President of Supermarket Industry, 1949-1951; Chairman of the Board, National Association of Food Chains, 1959-1960; President of Topco Association, Inc. for a period of three years (This was a group of thirty supermarket chains.) At the present time I am on the Board of Directors and the Executive Committee of the National Association of Food Chains and the Supermarket Institute.

1. My Grocery Background

I started in the grocery business 42 years ago as a truck driver for the Cannel Commercial Company, and then a short time later I drove a truck for Smart & Final for about one year. About 41 years ago I went to work for Albert C. Gerrard, the founder of Alpha Beta Food Markets. I was employed as a grocery clerk in the Pomona store. In August of 1922 I was invited by Mr. Gerrard to join him as a copartner in the operation of a store in Corona, and this I did. In 1929 the business was incorporated as Alpha Beta Food Markets, Inc., and I was the manager of this store. In May, 1929, I was given charge of the wholesale produce warehouse and the distribution system for Alpha Beta. Trouble came to all business, including the grocery business, in the early thirties, and about May of 1932, I opened a new type of store for Alpha Beta which we called a "depression store." It was so-called because we operated without fixtures. Merchandise, with the exception of meat, was stacked on the ground or on the floor. Some time later, after the depression lessened, the store was modified and fixtures were installed.

About 1934 I took charge of advertising. I was also given charge of the combined warehouse and the produce setup located in the central manufacturing area of Los Angeles. Mr. Gerrard and I had at that time about 25 stores. We worked closely together, in fact sat across a double desk from each other, with one telephone between us. About one year later we hired our first secretary. By 1935 we were doing about \$3,000,000.00 in sales and I was elected to the Board of Directors. In 1944 I became the General Manager. Later I was also Secretary and Vice-President of the company.

At this time we had lost some stores, but had made some gains in sales. After the war, and in the year 1945, we started to expand and by 1950 we had a total of 29 retail stores. Up to this time our policy had been to seek out locations and then make a deal with the owner to construct the building and to lease it to us. Since then we have purchased some stores, but uniformly they have been a headache, as in every case we had to change over the entire merchandising program. As a result, I have come to the conclusion that it

is better to start from the ground up and build your own store than it is to buy one already operating.

2. Single Store Operators

One major problem which we have had to contend with for years, is this: We select, and then at considerable cost, train good men for a number of years until they thoroughly know the grocery business; then they leave and open their own stores in competition with us. Ted Wood resigned in 1954 and started his own store in Pasadena. He has apparently competed very successfully. Joe Goodnight started to work for us in 1939 and stayed until late 1959; then he resigned to start his own grocery business. He competes directly with us and he appears to be doing a good job. Then we have sold stores to employees who wanted to strike out on their own. Blayne Hutchinson was our manager in the Downey store, which he purchased from us and used as a nucleus for the Greater All American Markets chain. L. J. and Fred Bentley, employed by Alpha Beta, purchased our store in Claremont some time in the 1940's. Fred is still operating this store very successfully. Frank Bray, also employed by Alpha Beta, purchased our store in Huntington Beach. He still has it and has also been very successful. There are other similar instances which I do not recall at the moment, but all of these men, trained at our expense, make real tough competitors.

Illustrations like these are numerous, showing that for newcomers in the business, opportunities to start in the grocery business are as great today as they have ever been in this Southern California area. As in any business, it helps to be trained, but any man who goes into the grocery business for himself and is willing to work has an advantage over the chains in the fields of service and human relations. He sits on top of the job all of the time and has personal acquaintance with most of his customers. He can also hold his prices competitive by belonging to such organizations as Certified or A. M. Lewis. As a matter of fact, Alpha Beta today buys over 1,500 items from Certified.

3. My Views on Competition

Before the merger between Von's Grocery and Shopping Bag markets, we competed directly with some of their stores in Temple City, Covina, Long Beach, Pomona, La Habra, Whittier, Downey, Lynwood, Garden Grove, and Arcadia. Both concerns always were tough competitors, and competition today is just as strong as it ever has been.

In my opinion, after being in this business for 42 years, there is apparently no chance, whatever, that any chain, or any group of chains, could dominate the grocery market in this area. If a man has the sales and merchandising "savvy" and picks out a good location and is willing to work just as hard as his counterpart did in the 1930's, he can make a success in the grocery business today. In the 41 years I have been with the company, competition has always been intense and I have never known a single year that I could say "competition is not pressing in now." This area contains the second largest metropolitan area population in the country and is still growing. This growth is demanding new stores on all sides. Lawyers for Von's-Shopping Bag have asked me "what impact did the Von's-Shopping Bag merger have on competition in the Los Angeles metropolitan area." My answer is "none at all." Those merged stores are still selling the same old groceries at the same old stands. It hasn't hurt our business, helped it, or affected it in any way.

Claude W. Edwards.

Subscribed and sworn to before me this 11 day of January, 1963.

Mauvis A. Mills, Notary Public in and for said County and State, [Seal.]

My Commission Expires March 4, 1966.

AFFIDAVIT OF CHARLES J. FUTTERMAN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

CHARLES J. FUTTERMAN, being first duly sworn, does hereby depose and state as follows:

I am the President of Shoppers Markets, Inc. I am also the Chairman of the Allied Food Division of the City of Hope and Chairman of the Board of Food Employers Council. In 1959 I was President of the Western Association of Food Chains and Vice President of the National Association of Food Chains. In 1961 I was Chairman of the Food Division of the United Jewish Welfare Fund.

I am also a member of the Bar of the State of Michigan. I came to California in 1937. In 1939 my father and I opened a grocery store known as Shoppers Rancho at First Boyle Streets in Los Angeles.

In 1942 I entered the Army and served four years, two of them in Europe.

In 1946 I returned to Los Angeles and Shoppers Rancho. My father had passed away in 1944 and the late Joseph Gach joined me at that time in a partnership. The store was then doing \$250,000 a year in volume. In 1949 Mr. Gach and I took over operation of an old store in Santa Monica and changed the name of our business to Shoppers Markets.

In 1950 we added a new market in Inglewood. In 1952 we opened our fourth store in Norwalk. In 1956 we opened our second store in Santa Monica, and one in San Pedro, and in 1958 three more stores were added, two in Torrance and one in Westchester.

In 1959 we built a headquarters office on South La Brea. In 1961 we opened two stores, one in Highland Park and one in North Long Beach, and purchased two, one in South San Gabriel from Sunfair and one in Los Angeles from Fox. We were able to purchase the Sunfair market because the owners had decided to go out of the business and we were able to purchase the Fox market because that company had got into financial difficulties through too rapid expansion. In 1962 we opened a store in Los Angeles.

Shoppers now operates 14 supermarkets in Los Angeles County, and, in addition, operates seven Stacy Drug stores and four Stevens Junior Department stores.

The success and expansion of Shoppers Markets has resulted from many factors and circumstances. Everybody in our company works hard, around the clock, and expects to continue to do so. In many of our stores there are strong ethnic groups that are predominant. We find that we cannot run all our stores the same. We cater to the wishes and desires of the people surrounding each individual store. We cannot do this as well as the individual store operator, but better than the larger chains. The smaller we were, the better control we had, the larger we get, the more difficult it is to be individualistic.

But we try, and we're still small enough so the top people can still get into the stores. We emphasize that our stores be kept clean, and that all company employees be polite and friendly. This seems to have paid off, and I feel that in the communities where we have stores, Shoppers has become known for the personal touch.

Another factor of major significance is Shoppers' membership in Certified Grocers of California, through which we are able to buy groceries as cheaply as anyone, while at the same time avoiding many of the expenses of maintaining our own warehouse. Any small store operator can belong to Certified, and pay the same price for merchandise as the chain operator. Our expansion has also been made possible by our ability to obtain financing for the construction of new stores because of our demonstrated past success.

As gratified as I am at Shoppers' growth, I really do not feel that there is anything particularly unusual about it. Other concerns, indeed most of the major chains operating in Los Angeles today, began with one store, and can relate a similar history of expansion. Moreover, I am confident that new concerns will likewise enter this market and grow. There is no reason why they cannot.

Of course, there are companies who will fail. This is inevitable in any business as keenly competitive as food retailing. But I feel strongly that the able and aggressive retailer has every chance for success. Enough of them have

succeeded in the past and, in my opinion, will in the future to insure even keener competition. In my opinion, also, there is not the slightest possibility that the business in this area will be dominated by a few large concerns.

It is my impression that the retail food industry structure in this area is not unlike the structure of the legal profession—that is, there are a few large law firms, numerous medium-size and small law firms, and hundreds of other practitioners. Neither the large firms nor the smaller firms have or are likely to have any monopoly either of the brains or of the legal business. Many clients prefer the services of the large firms, many prefer the more personal attention and service they get from the small firms and individual practitioners. It is not difficult to enter the business once one has passed his bar examinations. This is likewise true of the retail grocery business—the large chains provide employment for many persons and they fulfill a necessary role in the competitive struggle to serve the public. But they do not have, nor, in my opinion, are they likely to have any monopoly of the business. There is a constant entry of new concerns in the business and the intelligent and hard-working single store operator and small chain grocer can and does compete successfully with the larger chains. Some prefer to stay small and some desire to and do grow larger. In my experience there has been no real change in this basic structure and in my judgment there is no likelihood of any such change.

In my opinion, the Von's-Shopping Bag merger has in no way adversely affected competition. I expressed that view when I first learned of the merger and nothing has happened since to change my mind. In Los Angeles, the competitive effectiveness of a new store has never been dependent on the size of the chain with which it is affiliated. One is just as likely to lose customers to a store operated by a good small concern as to one operated by a good larger chain. No one in this area has any built-in advantage derived from size. Thus, effective, sometimes fierce, competition is offered by chains and independents alike, and I have not seen the slightest evidence that the merger has resulted in a lessening in the vigor of competition in any area with which I am familiar.

Charles J. Futterman.

Subscribed and sworn to before me this 26th day of October, 1962.

Carol E. Krause, Notary Public in and for said County and State, [Seal.]

My Commission Expires Mar. 15, 1963.

AFFIDAVIT OF GEORGE F. FITZPATRICK

STATE OF CALIFORNIA,

County of Los Angeles, ss:

GEORGE F. FITZPATRICK, being first duly sworn, does hereby depose and state, as follows:

I am the Executive Vice President and General Manager of The Boys Market, Inc., a supermarket chain consisting of twenty-five stores, all operating in the greater metropolitan area. In 1925 my folks opened up a grocery store at 65th and Broadway, and this was my first experience in the business. Then I went to work as a clerk in a Pasadena store for the present concern. At that time they had three stores. Later I became manager of one of them, then managed two, and then became a supervisor. I have also worked at advertising and filled different positions with the company. I became Director six years ago and today, after twenty-seven years with this concern, I am the General Manager.

Counsel for Von's have asked my opinion as to whether or not an individual has any opportunity today to get into the grocery business. My answer is "Yes, if he makes some effort to learn the business, is willing to work hard, and buys from Certified, or some similar concern." I know of many young people who have worked for chains, gained experience, and then have gone into business for themselves. This happens many times. In fact, it is one of the main complaints you hear from general managers of chain stores, that after they have spent years and considerable money in training intelligent, likely young people, they decide to go into business for themselves.

We have fourteen stores in direct competition with a

Von's or Shopping Bag store. All of them are within two miles or closer. We are in direct competition also with many other chains and single store operators. We consider that our two toughest competitors are Von's and Food Giant. This was true before the merger of Von's and Shopping Bag, and we consider it equally true today. I cannot say that I know of any instance in which the Von's merger has affected our business or our sales. Both Von's and Food Giant are extraordinarily good merchants. I would just as soon not be close or within competition distance of either one of these concerns. Any other concerns would be more than welcome, and we easily hold our own. I guess it all depends on how good a merchant you want to be and what you are willing to do in order to attract customers into your store and keep them coming back. I see no possibility of any chain or any group of chains dominating the Los Angeles metropolitan market. Competition in the grocery business seems to be steadily increasing—not lessening, and I sincerely believe that if the merger of Von's and Shopping Bag had any impact whatsoever on competition, either good or bad, I would have learned of it through some of the fourteen stores that we have directly competing with them. I can truthfully state that the merger had no noticeable effect one way or the other on our business or operation.

George F. Fitzpatrick.

Melva J. Anderson, Notary Public in and for said County and State, [Seal.]

My Commission Expires April 10, 1963.

AFFIDAVIT OF JOSEPH P. HUGHES

STATE OF CALIFORNIA,

County of Los Angeles, ss:

JOSEPH P. HUGHES, being first duly sworn, deposes and states as follows:

I am the President and Mrs. Hughes and I are the controlling stockholders of Hughes Markets, Inc., a corporation which is the successor to the business I started as a one store operation in 1952. Hughes Markets, Inc. now operates 13 supermarkets in the Los Angeles Metropolitan Area and employs about 1000 employees.

I commenced work in the grocery business in 1928 for the Great Atlantic & Pacific Tea Company (A & P) as an apprentice clerk in a store in Cleveland, Ohio. My boss was Roger Lavery, Sr. who is now the President of Thriftmart, Inc. By 1932 I had advanced to the position of market manager in the Cleveland area.

Jim Fitzsimmons had left A & P in 1928 and he came to California where he started his own chain of grocery stores. When he died three years later, Fitzsimmons Stores, Ltd. was a chain of 18 small stores. Mr. Fitzsimmons' widow offered this chain to Mr. Lavery for \$160,000, and I became one of the group to purchase these stores with Mr. Lavery. The name Fitzsimmons Stores, Ltd. has now been changed to Thriftmart, Inc.

I left my position with A & P and came to California in 1932 to work for the Fitzsimmons Stores, Ltd. From 1932 to 1952 I held various positions with this company, from store manager to general supervisor for all stores, to vice-president and general manager of the company.

In 1940 I purchased a piece of property at 12336 Ventura Boulevard, Sherman Oaks, California and leased it to Fitzsimmons Stores, Ltd., and I constructed a market on the property. When I left Fitzsimmons Stores in 1952 I decided to take over the store as my own and start my own business. This was a small store, but I have since enlarged it and remodeled it and it is now 12,000 square feet.

Since 1952 my business has been successful and my com-

pany has subsequently opened the following additional stores:

Address	Year
14440 Burbank Boulevard, Van Nuys	1953
1900 North Highland Avenue, Los Angeles	1955
16940 Devonshire Boulevard, Granada Hills	1956
15120 Sunset Boulevard, Pacific Palisades	1957
3075 San Fernando Road, Los Angeles	1958
4520 Van Nuys Boulevard, Sherman Oaks	1958
14620 Parthenia Street, Van Nuys	1958
11361 National Boulevard, Los Angeles	1961
*1100 San Fernando Boulevard, Burbank	1960
*6657 Laurel Canyon, North Hollywood	1960
*10400 Sepulveda Boulevard, Mission Hills	1960
21431 Devonshire Street, Chatsworth	1961

The three stores which are marked with an asterisk are stores which I purchased from McDaniels Markets in 1960. McDaniels in early 1960 was a 24-store chain but it had expanded rapidly with inadequate capitalization and got into financial trouble as a result. In an effort to keep the business going, McDaniels in 1960 sold over half its stores to various independents and smaller chains. But even with the sale of these stores, McDaniels could not meet its payments to its creditors and in 1961, after a series of attachment suits and other collection litigation, McDaniels sold its remaining nine markets to Food Giant and was declared a bankrupt. Other chains which got into similar financial difficulties and went under because of too rapid expansion and inadequate capitalization are Fox Markets and Yor-Way. Concerns which have grown sensibly and are adequately capitalized, such as my own company and others such as Shoppers Markets, can reasonably expect to continue to grow and prosper.

I have two sons who are employed by my company. I am a firm believer in working up from the bottom and I have followed this principle in training my sons. They have proved themselves and have progressed steadily in the business. I expect that some day they will be a factor in the running of the business.

My company is an active member of the Southern Cali-

fornia Retail Grocers Association. I am also Chairman of the Board of Certified Grocers of California, Ltd., and I have served as a director of Certified since 1947.

Certified has a most efficient purchasing, warehousing and distribution operation. In addition it offers those members who desire it accounting service and expert advice on store location and layout; it has its own coffee roasting and bean processing plant, and it has recently organized an equipment subsidiary to assist members in obtaining equipment and fixtures for their stores.

For the fiscal year ending September 1, 1962 Certified had the highest dollar volume of sales to its members in its history. Its sales for that year were \$299,646,945 and its wholly-owned subsidiary, Spartan Grocers, Inc., had additional sales to its members in excess of \$50,000,000. In addition to advertising allowances, rebates, promotional allowances and interest returned to its members during the year, Certified returned patronage dividends to its members of 1.25% on dry grocery warehouse purchases, 2% on drop shipment purchases, 2.50% on frozen food purchases, 1.30% on health and beauty aid purchases, 1% on delicatessen purchases, and 5.25% on purchases of Certified packed coffee and bean products. These returns were achieved despite increased operating expenses during the year, such as negotiated wage increases, increased federal payroll taxes, and higher cost of some supplies and equipment. These increased costs were offset by higher volume, a strict cost control program, improved mechanization in the handling of merchandise and invoices, and greater employee efficiency. To illustrate the wide range of products available through Certified Grocers I am attaching copies of the Certified order forms for delicatessen items (Book No. 5, dated January 9, 1963), frozen foods (Book No. 6, dated January 9, 1963), non-foods (Book No. 30, dated January 2, 1963) and the grocery division (Book No. 19, dated January 9, 1963).

I have heard it said that the larger, direct-buying chains have an advantage over the purchaser through Certified in price. I am certain that the Certified member gets his goods on his shelf at virtually the same price as many of the direct-buying chains, and the Certified warehousing and distribution system is so efficient that the member does not

need to do very much warehousing on his own and is able to maintain close inventory control. For years in this area Safeway, for example, had a notoriously inefficient warehouse and distribution system, but it has now built a new and modern warehouse in order to make its operations more efficient.

Hughes Markets makes most of its purchases from Certified, except for meat, produce, bread and milk, which Certified does not handle, and except for occasional outside purchases of items. These outside purchases are not all because of price considerations but because Certified does not handle the particular item or I may desire a large quantity of an item for protection.

With respect to meat purchases, it is my opinion that there is not any big difference at all in prices whether the purchase is made by a large, medium-sized, or a small chain. My opinion is that the smaller operator, needing a smaller quantity, actually can at times be more selective and get good quality at a cost even below that of the larger chains.

On produce, the single store operator buying at the right time in the fluctuating produce market can sometimes do as well and probably better on price and has the opportunity to be more selective than the larger chains. The larger chains may have some advantage in buying a carload of hard produce, such as onions or potatoes, apples, watermelons or pears.

The existence of chain stores is a fact of life and I am sure their existence, just as the existence of retailer-owned cooperative buying organizations like Certified Grocers has resulted in better food at better prices to the consumer. Certified, of course, is the salvation of the small grocer, and but for its existence the small grocer simply could not compete with the chains.

I have not seen any change in the competitive picture in this area and I do not see how there could be any as a consequence of the merger of Von's and Shopping Bag. Certainly competition has not lessened. It continues to be very vigorous. There are literally thousands of separate grocery concerns doing business in the Los Angeles Metropolitan Area ranging from single store operators and small and medium-sized to a few larger chains. I do not think

there is any possibility that this market will be controlled by just a few, or even a few hundred concerns, and I think most grocers in this area have difficulty in understanding how it could possibly help competition or help the industry to break up the merger of Von's and Shopping Bag.

Joseph P. Hughes.

Subscribed and sworn to before me this 24th day of January, 1963.

E. Scott, Notary Public in and for the County of Los Angeles, and State of California, [Seal.]

My Commission Expires February 19, 1965, 2716 San Fernando Road, Los Angeles 65, Calif.

AFFIDAVIT OF ROGER LAVERTY, SR.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

ROGER LAVERTY, SR., being first duly sworn, deposes and states as follows:

I am President of Thriftmart Markets, which is a chain of 67 markets in Southern California and Nevada. I came to Los Angeles in 1931 at the request of the widow of James Fitzsimmons to purchase the chain of 18 Fitzsimmons Stores, Ltd. I purchased these stores for \$160,000, of which \$20,000 was my money and the balance was borrowed from various investors. I paid out the last of the original investors for \$250,000 in 1952.

Prior Experience

My schooling was cut short by my father's death and the necessity of helping to support my family. I commenced work as a taffy puller in a candy stand in Pittsburgh, Pennsylvania, and thereafter successively until 1913 I held various jobs as manager of the candy stand, salesman of the first tungsten lamps, owner of an electric light agency, wiring estimator, butcher, saw salesman, hot hoop iron

catcher, and armature winder. In 1913 I answered an ad of the Great Atlantic and Pacific Tea Co. and was employed as a house-to-house solicitor taking orders for coffee and tea at a salary of \$3 per week and 20 per cent commission. Soon I gained enough business to use a company horse and wagon and later I was put in charge of an A & P store. This store had gross sales of \$300 a week when I took over and within three months it had sales of \$1100 a week. I was then given a larger A & P store with 12 employees to manage. This store did \$4000 worth of business weekly.

In 1915 A & P put me on the road opening stores. My job was to go out and lease a store, have a carpenter build shelves, order the merchandise from the warehouse, and employ a manager to run the store. In this way I opened more than 500 stores for A & P between 1915 and 1929.

In 1922 A & P made me vice president in charge of the Cleveland area and later in 1929 I was promoted to first vice president of the A & P central division with responsibility for 2600 stores. In this same time James Fitzsimmons had risen to the position of general superintendent of A & P's Pittsburgh territory. Mr. Fitzsimmons became ill in 1929 and came to California where he recovered and within two years opened 18 stores doing business as Fitzsimmons Stores Ltd. These are the stores which I purchased in 1931 with my total assets of \$20,000 plus \$140,000 invested by friends who had confidence in me. These were very small stores, of course, as there were no supermarkets in those days. The total sales of the 18 stores were \$3,600,000 annually.

Thereafter my business prospered greatly as a result of hard work, loyal and able employees, good service at fair prices and the continuing population explosion in Southern California. In 1957 the name of the company was changed to Thriftmart, Inc.

I have taken the utmost care in training my two sons in the business. My son Robert is in the sales department and my son Roger, Jr. is in the real estate division of Thriftmart. Each of them has spent many a morning at the produce market at 3 A.M. This is but one example of how they have learned the business from the bottom up.

I have been advised that the Government attorneys in the action against Von's has cited the 1949 acquisition by Thriftmart of the 19-store chain of Roberts Markets as evidence of a tendency to monopoly in the grocery business in this area. Actually I am convinced from my long experience that there is not the slightest possibility of monopoly or anything approaching it in retail food distribution in this area. There are just too many strong, able and aggressive competitors ranging from single store operators, small chains, medium sized chains, to large national chains doing business here for any company to dominate the market. And since the draw area of any particular store is not very large, competition for customers is on a store-by-store basis. For this reason the single store operator can compete just as well as any store of a larger chain. Moreover, this is a business which is quite easy to enter and each year new and able competitors enter into the business. I take some pride in the fact that I have consistently helped our employees who desire a business of their own to take over an older Thriftmart store. Many have done this and many have prospered. For example, I turned over a large number of the Roberts Markets to the former managers or employees on a cooperative arrangement whereby Thriftmart supplied the inventory on consignment but the business was owned and operated by the former employees. I made this arrangement with respect to the following stores we acquired from Roberts:

Address

468 Market Street, Inglewood, California

2570 Lincoln Boulevard, Venice, California

11526 Santa Monica Boulevard, Los Angeles, California

14521 Ventura Boulevard, Sherman Oaks, California

1830 East Artesia Boulevard, North Long Beach, California

310 Torrance Boulevard, Redondo, California

1505 Wilshire Boulevard, Santa Monica, California

In addition to the foregoing we sold to other individual

operators in the years indicated the following of the stores we acquired from Roberts:

Address	Year
11841 Wilshire Boulevard, Los Angeles, California	1951
49 Pier Avenue, Hoermosa Beach, California	1956
436 Atlantic Boulevard, Los Angeles, California	1955
9607 So. Long Beach Boulevard, South Gate, California	1956
420 Broadway, Santa Monica, California	1955

Thriftmart has similarly sold to individual operators or employees various of its older stores or entered into co-operative arrangements with older employees to let them take over a store as their own business. I estimate that between 1950 and 1960 we have disposed of some 15 stores in this fashion. The fact is that stores do become obsolete from the standpoint of a chain with its high labor costs which make operation of some stores unprofitable, whereas an individual operator can take over the same store and run it profitably as a family business because he does not have the high overhead. There are a large number of "graduates" of Thriftmart who are successfully running their own businesses today just as there are many such "graduates" of the other chains. Actually the chains furnish the training and experience and often the stores for many new competitors entering the business.

The grocery business is quite easy to enter and many do enter it each year. And those with ability, training and enterprise can and do succeed. It is a highly competitive business, however, and those unwilling or unable to work hard, make friends with their customers and give them first-class service at fair prices, will not and do not succeed. I am certain that I could start all over with one store today and make a great success of it. Many have done so in recent years and many I am sure will do so in the years to come.

In my opinion the merger of Von's and Shopping Bag has not lessened competition in this area or made it more difficult for any of the thousands of single store operators and small and larger chains here to compete. It kept two

local chains in the hands of local people who have the respect of the entire industry.

Roger Laverty, Sr.

Subscribed and sworn to before me this 10th day of January, 1963.

May McElroy, Notary Public in and for said County and State, [Seal.]

My Commission Expires February 2, 1964.

AFFIDAVIT OF RICHARD RALPHS

STATE OF CALIFORNIA,

County of Los Angeles, ss:

RICHARD RALPHS, being first duly sworn, deposes and states as follows:

I am the President of Ralphs Grocery Company. Ralphs was started by my grandfather, George Albert Ralphs, ninety years ago in 1873, with a small grocery store on Sixth and Spring Streets, Los Angeles. It remains a family business today. In the years which have passed, Ralphs Grocery Company has grown with nearly every community in this area. Today, we own and operate 45 modern supermarkets.

I think it is generally agreed that in the 1930's my father and his cousin, Walter W. Ralphs, Sr., originated the supermarket as it is known today. M. M. Zimmerman in the book "The Super Market" published by McGraw Hill Book Co., Inc. on pages 24 and 25 makes reference to Ralphs as the pioneer in this field. Another innovation that my father and his cousin came up with was the self-service idea, which replaced home delivery back in 1928. They also are generally credited as being first to provide ample free parking which made self-service possible. Later they introduced the single check-out gates, and extended self-service to include meats, baked goods, and fruits and vegetables.

Over the years many new grocery concerns have entered the business in this area. Many have been successful and, of

course, some have been unsuccessful. It has always been a highly competitive business and it is today.

In a speech to the Food Industries Sales Managers Club on March 24, 1961, our General Manager, Gene Walsh, stated in part "Ralphs pledges to continue its leadership in the food industry in Southern California through better merchandising, the finest of store service facilities, the making of a fair and reasonable profit, and through financially sound growth." This accurately stated our policies for the future.

It is my opinion that the merger of Von's and Shopping Bag has not lessened competition in the slightest. Because of strong cooperatives like Certified Grocers of California and Orange Empire, the many single store operators and the small chains can and do compete very effectively with the stores of the larger chains. In my opinion there is no danger that the merger of Von's and Shopping Bag will lessen competition in this business or tend to create a monopoly in it.

Richard Ralphs.

Subscribed and sworn to before me this 18th day of February, 1963.

Pearl Roth, Notary Public in and for said County and State, [Seal.]

My Commission Expires August 12, 1966.

AFFIDAVIT OF NEAL D. RAMSEY

STATE OF CALIFORNIA,

County of Los Angeles, ss:

NEAL D. RAMSEY, being first duly sworn, does hereby depose and state as follows:

I am the President of Market Basket, a chain of retail grocery stores. I am a past regional director of the Supermarket Institute and a trustee and past chairman of the City of Hope's Allied Food Division. I have also served as President of the Western Association of Food Chains and

as Vice President of the National Association of Food Chains.

I came to California from Auburn, Illinois, in 1922 and went to work as a clerk for Crown Emporium Stores, a retail grocery chain. Ultimately, I became a store manager for Crown Emporium and later was put in charge of inventory for that concern.

As a result of a series of transactions which took place in the late 1920's, Crown Emporium and six other chains were consolidated and ultimately became part of the Safeway chain, thus making Safeway by far the largest and most powerful factor in the retail grocery business in Los Angeles.

In 1930, Howard Geohegan and Arthur Cauthers opened the first Market Basket store in Pasadena. Later that year, I became associated with this firm and was put in charge of its second market. By 1933, Market Basket had opened six new stores, and I was made the firm's buyer.

Market Basket became a corporation in 1938. In 1940, when the company had 26 stores, I was elected to its Board of Directors. In 1946, I was made President of the company, a position I have held ever since.

Today, Market Basket has 55 stores. Most of them are located in Los Angeles and Orange Counties, but we also have stores in San Bernardino and Riverside Counties as well. Our sales are approximately \$120 million a year.

I believe that Market Basket's growth is a tribute to this country's system of free enterprise, which has permitted a concern which began with one market in the depths of a depression to succeed and grow by reason of hard work and thoughtful planning. For years now, I have heard that this record of accomplishment could not be duplicated today; that times are different and that business opportunity is no longer available to a newcomer in the retail grocery business. To my mind, such a belief is just so much nonsense. California and Los Angeles are still growing. New communities are springing up every day, and with them come new opportunities for the watchful, aggressive grocer, whether he is opening his first market or his sixtieth.

The past provides ample evidence of the success of small concerns in this business, and I firmly believe that a small concern or a company just opening its first store has as

much chance of success—no, a greater chance of success—than it would have had 30 years ago. Remember that in the 30's we were mired down in a depression. Los Angeles had not yet begun its fantastic growth. We did not have the full advantages of strong cooperative buying groups such as Certified Grocers and Orange Empire Co-op. Safeway, a powerful national chain, had more stores and a larger share of the market than any chain does today. Yet, most of this area's larger chains began operations on a small scale in the 30's and were able to grow, in large part because of their membership in Certified. Today, the small concern has a good deal more going for it than ever before, and if the small concern of the 30's could succeed, so can the small concern of the 60's. In my opinion, there is plenty of opportunity today for the newcomer to open up a store in Los Angeles and to prosper if he knows what he is doing and is not afraid to work.

In March, 1960, Von's and Shopping Bag merged. Market Basket had at that time and still has a number of stores which are near enough to a Von's or Shopping Bag store to compete for the patronage of the same customers, and hence, I am in a good position to assess the impact of the merger on competition. In my opinion, the merger has not changed the vigor, intensity or character of competition in any way. Certainly Market Basket has not experienced any loss of business or been aware of any change in competition as a result of the merger. Since March, 1960, Market Basket's sales have increased in record amounts to record highs, and it has expanded at a more rapid rate than at any time in its history.

Von's and Shopping Bag stores offered stiff competition before the merger, and they still do. But stiff competition also faces Market Basket stores from numerous other chains and the hundreds of independents doing business in the Los Angeles area. We do not find it any more difficult to compete against a Von's or a Shopping Bag store now than before the merger, and I am confident that other Von's and Shopping Bag competitors will say the same thing. The merger simply has not changed competitive conditions in any way so far as I can see.

Nor do I see any chance that any chain or group of chains will dominate the retail grocery business in Los

Angeles. There are just too many able competitors eager to expand their existing businesses and so much opportunity for others to enter the market to warrant a conclusion that only a few will succeed and eventually control the market. In fact, quite the opposite is likely to occur. It must be remembered that the number of grocery chains in Los Angeles is greater today than ever before. This area can be distinguished from other areas across the country by reason of the increase in number of chains of all sizes, as well as by the strength of its many independents. There is no reason to think that this trend toward an increasing number of competitors will not continue.

Neal D. Ramsey.

Subscribed and Sworn to before me, this 19 day of October, 1962.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF TED R. WOOD

STATE OF CALIFORNIA,
County of Los Angeles, ss:

TED R. WOOD, being first duly sworn, does hereby depose and state as follows:

I am the president of Pantry Food Markets, a retail grocery concern which operates 10 grocery stores in Los Angeles County. I have been in the grocery business all my life. For 21 years, from 1933 to 1954, I was employed by Alpha Beta, a local chain of supermarkets. When I resigned in 1954 I held the position of store manager.

History of Pantry Food Markets

In 1954 a group, seven men who had been associates of mine, and I decided to start our own grocery business. We did this in the belief, based on our past experience, that a

small concern could compete successfully and profitably in Los Angeles County. In fact, it was our then belief, which we have since confirmed in practice, that a single store operator or small chain who maintains an aggressive competitive policy and watches costs carefully can successfully compete and prosper and grow.

We invested our savings in our new business. In all, we began with \$48,000.

A corporation was formed under the name of Pantry Food Markets. In March 1955, Pantry opened its first store at 141 South Marengo, Pasadena, and a second store was opened in July of the same year at 495 North Altadena Drive, Pasadena. Each of these stores faced competition from markets operated by a number of chains and independents, but as we had anticipated, we were able to compete successfully against those stores. In fact, our success has exceeded even our highest hopes. We found that we were doing very well, and within a year we were ready and able to expand our operations. In 1956 we added one other store to our chain. In 1957 we added another, and in 1958 another, all in the Pasadena-Altadena area. Pantry continued to prosper. From June 1959 to December 1961 we opened five new stores, one in Pasadena, one in Altadena, one in South Pasadena, one in Duarte, and one in Monrovia. In every one of those areas we faced competition from leading chains and independents, and in every case we were able to compete against them successfully.

I think that Pantry is a living example of the opportunity available in this area to an aggressive, capable grocer. The success of Pantry is proof that new concerns can enter the retail grocery business and within a relatively short time expand and prosper despite the intense competition offered by chains and other independents.

The Significance of Membership in a Cooperative Buying Organization

The reasons for Pantry's success are many. They include a large measure of hard work, conscientious effort and thoughtful planning. Also of tremendous significance was the experience which I and my associates gained as em-

ployees of a large chain. The training we received in that employment made possible our success when we started our own concern.

However, the primary reason for our ability to compete successfully has been our membership in Orange Empire Cooperative, a cooperative buying association sponsored by A. M. Lewis, Inc. Orange Empire, like Certified Grocers of California, provides the independent grocer with the opportunity to buy groceries at prices as favorable as those available to large chains which buy directly from original sources of supply. At the same time, cooperative membership permits the independent grocer to avoid the problems and headaches of running his own warehouse and distribution system. I found while with my former employer that such problems can often be of serious magnitude.

The existence of the large cooperative purchasing organizations in this area and the opportunity they have afforded smaller concerns such as Pantry of buying as cheaply as chains has placed the smaller concern on an equal footing with the chains. Success then depends on many other factors, such as providing courteous and friendly service, employing successful merchandising techniques, watching the pennies, and being able to maintain a flexibility sufficient to meet changing competitive conditions. In these respects I am of the view that an able and conscientious independent can out-compete a chain store.

Effect of the Von's-Shopping Bag Merger

I have been asked by attorneys for Von's to express an opinion with respect to the effect on competition of the Von's-Shopping Bag merger. In my opinion, that merger has had no effect whatever on the intensity of competition between retail grocery stores in the Los Angeles area. That competition has always been fierce, and the merger has not lessened it in any respect. It seems apparent to me that:

1. The merger did not eliminate a competitor or change competition. The stores previously operated by both Von's and Shopping Bag are still in operation today, competing against the same independent and chain stores as before the merger.

2. Competition has actually been enhanced since the merger by reason of the following developments:

a. The opening of new stores by new and existing concerns.

b. The entry into this market of a national chain, American Stores, through its acquisition of Alpha Beta. American Stores is a large concern, a keen and aggressive competitor, and Alpha Beta can be expected to become of increasing competitive significance in Los Angeles.

c. The innovation of selling food through discount houses or other discount outlets, a development which seems to be here to stay and which has grown in importance in the last two years or so.

Actually the recent developments cited above do more than emphasize the competitive vigor in this area. They show that the grocery business in Los Angeles is in flux and subject to change, as it has always been. There has never been an opportunity for any grocer to relax or to become complacent or to ignore changing conditions, for as soon as he does, he finds a competitor taking his business.

By the same token, in my opinion, no chain or group of chains has been or will be able to dominate this market. With independents placed in a position to compete on equal terms with larger concerns by reason of cooperative buying, with opportunities available for new chains to develop and grow, with the ability and aggressive characteristics of many hundreds of separate competitors, and with the continuing prospect of innovations in food retailing which in the past have always led to keener competition, no one concern could possibly achieve a position of dominance. Under the circumstances, I cannot conceive of the possibility that this market will fall into the hands of one or even a few concerns. I view the merger of Von's and Shopping Bag with indifference. In my opinion it cannot possibly affect me, or, for that matter, any of the hundreds of grocers in this area.

Ted R. Wood.

Subscribed and sworn to before me this 25 day of October, 1962.

Julius T. Eifert, Notary Public in and for said County and State, [Seal.]

My Commission Expires May 24, 1963.

DEFENDANTS' EXHIBIT BA
IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title omitted]

AFFIDAVITS OF VON'S OFFICERS

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AFFIDAVIT OF CHARLES VON DER AHE

STATE OF CALIFORNIA,
County of Los Angeles, ss:

CHARLES VON DER AHE, being first duly sworn, deposes and states as follows:

I am Chairman of the Board of Von's Grocery Co. I am eighty years of age and I have been engaged in the business of food distribution and merchandising in the Los Angeles area for 57 years. I am the father of five sons and three daughters. One of my sons is a member of the Society of Jesus, at Loyola University of Los Angeles; one is a doctor of medicine, practicing in Los Angeles, and three are associated with me in Von's Grocery Co. which they started in 1932. Some of my thirty-five grandchildren also work for Von's Grocery Co.

In 1902 at the age of 19 I decided to leave Illinois and come to the West Coast as I had heard many great stories about California and the opportunities open to men who were not afraid of hard work and adventure. A few years thereafter I found employment in a small butcher shop known as Luer's Butcher Shop in Los Angeles and I began to save my money so that I could own and operate a grocery store of my own.

In 1906 I was able to buy the F. N. Velsey Grocery Store and Meat Market which was located at 7th and Figueroa Streets in Los Angeles where Barker Bros. department store now stands. This was a typical small grocery store of that day and I doubt that we carried as many as 400 dif-

ferent grocery items to choose from. Compare this with the first supermarkets of the late 1930's and early 1940's which carried approximately 1000 items and today's supermarkets which stock up to 8000 items, most of which are new or basically greatly improved.

My first store was not a great success because less than a year after I bought it I found that my landlord planned to raze the building. I was thus forced to sell my stock and for several years to work for other grocers until I could save enough money to open my own store again. I was finally able again to open my own market at 48th Street and Vermont Avenue. In 1914 I acquired a second store at 61st and Broadway and in the following years I added more stores until by 1928 my firm had 87 grocery outlets. I believe I was able to achieve this success because of sound merchandising, fair prices, and by stressing service and courtesy to the customers. These are principles which I endeavored to inculcate in my sons and I am proud to say that since they started the present Von's Grocery Co. in 1932 these principles have been constantly adhered to.

The growth of my business was also greatly helped by the expanding population in this area and it seems to me that this factor will continue to make the grocery business profitable and successful in this area.

Shortly after I commenced doing business as a grocer in the Los Angeles area, it became apparent to me and to other smaller operators that we could obtain our groceries at a better price and sell them to the public cheaper if we had a cooperative buying organization. At that time there were a number of wholesalers who also operated retail stores doing business in this area, such as Chaffee, which operated the chain of retail stores called Acme Groceterias, and there were other chains such as Jevne, Albert Cohen, Ralphs and Newberry, who were able to obtain their groceries at a lesser price than the smaller operators. Accordingly, my father-in-law, A. O. Luer, and I and seven other grocers, including Jules Revere and Charles Mottaz, organized Spartan Grocers, which I believe was the first retailer-owned cooperative buying organization in this area. It preceded the organization of Certified Grocers of California by a number of years. Prior to the organization of Spartan by myself and the other grocers I have referred to, we had to

pay the wholesalers' mark-up, which was high, and then we had to add a mark-up for our own profit, but after we commenced buying through Spartan, we added a mark-up to cover our costs and the profit and were thus able to sell our groceries to the public at a cheaper price.

In 1928 I sold my 87 stores to MacMarr, Inc. which later became part of Safeway Stores. I recall at that time fear was expressed by some that Safeway would have a virtual monopoly on the grocery business in this area and no one could start a new grocery store and compete with Safeway. This was utter nonsense, of course, as my sons and hundreds of other presently successful grocers in this area have demonstrated in the succeeding years.

I recall that in the early days the chains which could buy directly from manufacturers did in fact have a great price advantage over the single store operator or the smaller chain and the food wholesalers and brokers got together and tried to persuade the food manufacturers not to sell to the chains. This led the government to bring an action under the Sherman Act against the wholesalers and food brokers and they were enjoined from pursuing this course of action. (See *United States v. Southern California Wholesale Grocers Ass'n., et al.* (S.D. Cal. 1925) 7 Federal 2d 944.) This advantage that the chains had led to the formation of Spartan, as mentioned above, and also to the organization of Certified Grocers of California, a larger retailer-owned cooperative buying organization, by the grocers in this area so that they could have the same advantages of mass purchasing that the chains enjoyed. Certified is a cooperative wholly owned by its retailer-members. I believe it today is the largest grocery-purchasing organization in the United States and membership in it gives even the single store operator the same purchasing advantages of the largest chains. In my opinion, if there is a single most important factor which has prevented this market from being dominated by a few chains and which will continue to ensure the ability of the single store operator and small chain to compete successfully in this area it is the existence of Certified Grocers.

Certified does far more for its members than simply purchasing groceries for them at low prices. It has, for example, specialists in advertising, store location and layout, a

line of special brands which it manufactures itself; it furnishes its members accounting service if they want it, and it has now organized a new company, known as Grocers Equipment Co., to help its members obtain equipment at the lowest possible price and to provide financing on reasonable terms to qualified members.

In my lifetime in the grocery business in this area I have witnessed many changes and innovations in food distribution. In the early days the salesmen calling on our stores used horse and buggy transportation and we purchased such commodities as crackers, molasses, kerosene and Coca Cola syrup in barrels. Service then was over-the-counter, and choice of product was very limited. The area served by a particular store was very limited since most customers traveled by foot, and the average store was only 40 to 50 feet wide and deep. Most of these small stores have gradually been closed over the past 25 years although a few of them still remain in certain areas. These small stores became obsolete, just like the buggy-makers, because of the preference of the American consumer for a better way of life. But the individually owned and operated supermarket can do just as well as the chain store. Competition in this business is on a store-to-store basis, and the aggressive and intelligent single store operator can do just as well if not better than a store of any of the chains.

I have read the statements furnished to our attorneys by the Government attorneys as to what certain persons if called to testify would testify to. I refer to the statements of Adrian Bynum, Artie L. Carpenter, Richard Dick, Manuel Gertmenian, Roderick A. Irvine, James E. Ledgerwood, Robert J. Logue, Ernest A. Mekjian, Paul Palmer and Jack Swerdlick. I assume they are correct when they say there has been a decline in the number of single store operators in this area since 1950. I know, for example, there has also been a decline in the number of stores operated by many chains. A & P once had over 15,000 stores in this country and I understand it now has fewer than 4,000. This is a part of the replacement of the smaller, older stores by the large, modern supermarkets. Part of the decline in number of "single store grocery retailers" is also no doubt due to their own growth into a two store or larger chain. Mr. Irvine, I note, was a single store operator for a time, and

when he acquired a second market it obviously resulted in a decline in the number of "single store grocery retailers".

I am puzzled by the reiteration in said statements that the large chains which run their own warehouses have "an advantage over independents and small chains in terms of inventory control". From my own experience I can state flatly that if the single or two store operator is unable to have absolute inventory control then he is indeed a poor operator. Certainly his problem is far less in this respect than the complicated inventory and distribution problems of the larger chains. And as for the reiterated statement that the single store operators and small chains "do not have their own highly developed distribution system," I would answer that of course they do not, and they do not need one with such a small business.

When Von's and others organized Jerseymaid, the dairy cooperative, they were all relatively small concerns. Other competitors organized similar concerns such as Golden Creme Farms. This opportunity is not foreclosed to anyone, and I have no doubt that if the vast Certified Grocers membership felt it necessary or advantageous they would have Certified handle dairy and even meat and produce items. I am informed and based on my many years of experience I believe that the able single store operator can do just as well in terms of price and quality on purchases of meat and produce as the large chain.

As for the statements that the eight, nine, fifteen and twenty largest chains increased their share of the market between 1950 and 1958, I believe it is correct and it is worth noting that the market shares of Safeway and Ralphs, the leaders, declined in this period. And with over 4000 separate grocery concerns doing business in this area today and with the twenty largest companies having only about 50% of the business between them, the suggestion that there is a danger of monopoly of the business in my opinion borders on the ridiculous.

There is vigorous competition in the retail grocery business in this area and I note that each of the statements say that the proposed Government witness would testify "that he faces very vigorous competition from Von's." I am sure this is true and I am certain that it will continue to be true. Vigorous competition, in my opinion, is essential to the

public interest. The merger with Shopping Bag did not, in my opinion, lessen competition at all. There were good business, personal and tax reasons for the merger and I am certain that no competitor has been or could be hurt by the merger, and competition has not been lessened in this area.

In my many years in the grocery business I have witnessed great strides in food manufacturing, distribution and marketing. Some may wish a return to the cracker barrel days of the small corner grocery but I do not think the public would stand for it. The public demands and requires a wide selection of reasonably priced groceries at a clean, attractive and convenient location and it gets it in this area. Government figures that I read in a recent issue of the Commercial Bulletin showed that prices at the grocery store for the Government's standard market basket in 1962 were only 2% over that in 1952, whereas the Government's price index for all items excluding food rose 17% in the same decade. When one considers the tremendous increase in wages for employees in this period he is forced to agree with the recent statement of Secretary of Agriculture Freeman that food is a great bargain.

In recent years we have seen the development of discount houses selling groceries and countless other items, drug stores selling groceries, liquor stores selling groceries, the development of bantam stores, and now I have read that certain large oil companies are planning to sell groceries at their gas stations. This is an ever-changing and ever-improving business and in my opinion there always has been and there is today great opportunity for the able and hard-working man to enter into the business and to succeed. Since competition is obviously on a store-by-store basis, I do not think there is the slightest possibility of a lessening of competition or a monopoly in this business in this area.

I can think of only one area where the larger and well-capitalized chain has an advantage over the small chain and single store operators, and that is in getting space in shopping centers. Various bills have been introduced in Congress which if enacted would give financial assistance to the smaller operators who desire space in a shopping center. Each of the statements of the proposed Government witnesses mentions this problem, but breaking up the merger of Von's and Shopping Bag could not possibly help them

in this respect—or any, for that matter. This is a matter where only Congress can help the small operator, and I hope it does.

Charles Von der Ahe.

Subscribed and sworn to before me this 11th day of January, 1963.

Doris W. Paschal, Notary Public in and for said County and State, [Seal.]

My Commission Expires May 10, 1965.

AFFIDAVIT OF W. R. HAYDEN

STATE OF CALIFORNIA,

County of Los Angeles, ss:

W. R. HAYDEN, being first duly sworn, does hereby depose and state as follows:

I am Senior Vice President of and the largest single stockholder of Von's Grocery Co. (hereinafter referred to as "Von's"). Prior to the merger of Von's and Shopping Bag Food Stores (hereinafter called "Shopping Bag") on March 28, 1960, I was the President of and the largest stockholder of Shopping Bag. Indeed, although stock of Shopping Bag was publicly held there was not a very large market in the stock and I and members of my family owned approximately 60% of the stock of Shopping Bag. Shopping Bag basically was a "family" business developed from a first store opened in 1930 to a 38-store chain by March of 1960.

Prior Experience in the Grocery Business

I came to California from Kentucky in 1926 at the age of 22 and soon found employment as a clerk in one of the small grocery stores of the E. A. Morrison Grocery Company. This company was a local grocery chain which had the grocery departments in approximately 50 stores in Los Angeles. At that time the stores averaged from 4000 to 6000

square feet and they consisted of the grocery department, the meat department and the produce department, each under separate ownership and management.

In 1928 the E. A. Morrison Company, the then Von's chain of about 87 small grocery departments, and the Humpty Dumpty chain of about the same size were merged into one grocery company which was named MacMarr Grocery Company. Prior to this merger I had been appointed manager of one of the E. A. Morrison markets and following the merger I was promoted to Supervisor of the Grocery Department for the Hollywood District. I held this position until 1930 when I resigned to form my own company.

In October of 1930, W. D. Rorex, also a former E. A. Morrison Company employee, and I formed a partnership and purchased one of the stores of the MacMarr chain. About a year later, in 1931, we opened our second store. We opened two more stores in each of the depression years of 1932 and 1933, and in 1933 we dissolved the partnership and incorporated as Shopping Bag Markets (the name was changed to Shopping Bag Food Stores in 1947). I became President and General Manager of the corporation and Mr. Rorex became Vice President. He retired in 1945 and passed away in 1952. Our business was successful and in 1934 we opened seven more grocery departments in small stores. In each of our stores the grocery, meat and produce departments were separately owned and operated.

Our first store of large size was opened in 1935 in the city of Montrose, Los Angeles County, in direct competition with stores of Safeway, A & P, and Piggly Wiggly. We were able to and did meet the competition of these larger chains because our membership in Certified Grocers enabled us to buy our groceries at competitive prices and because we emphasized courtesy and service to our customers.

All building was curtailed with the commencement of World War II. By that time Shopping Bag Markets was a chain of 12 grocery departments in moderate to small size stores. With the end of World War II, however, we began an active building program to the point that by 1960 we had a total of 38 stores. By the late '30's the concept of separately owned grocery, meat and produce departments in small stores had begun to change to one of a larger store of from 20,000 to 30,000 square feet and all departments

owned and operated by the same management. All of our stores built after 1945 were of this type with the grocery, meat, produce, delicatessen, liquor and junior department store (clothing items) departments owned and operated by Shopping Bag.

This short statement of the beginnings and the growth of Shopping Bag may give the impression that it was easy, but of course it was not. For example, when we opened our second store my working hours increased from about 14 to 18 hours a day because I had to take a truck and shuffle goods from one store to another which might be in short supply. And my family and I made sacrifices in order to build a successful business.

Ability to Enter the Grocery Business

People in general may not be as willing today to make the sacrifices and put in the hard work necessary to start from scratch to build up a successful business. However, most of the larger chains in this area got their start at about the same time and developed in about the same way as Shopping Bag. I have in mind in this connection Von's, Alexander's, Thriftmart and Market Basket. This is also true of other chains which started after World War II, such as Shoppers, Hughes, Pantry Food and many others. I have no doubt at all that if I were 30 years younger and not so tired I could start out again today with no more than I had in 1930 and in 30 years I could build up a chain of 38 stores just as I did before. I realize it costs more rent to lease a store now, or to buy one, but financing is available through suppliers, or the Bank of America and other banks, or through the Small Business Administration for persons with experience, integrity and know-how. Financing a small business is a much easier proposition today than it ever was in the 1930's. Moreover, just as my business started with the purchase of one store from the MacMarr chain, so today others can get their start by purchasing or acquiring the lease on a store which one of the chains decides to dispose of. I know a large number of successful grocers in this area have got their start in this way. Shopping Bag in recent years has sold to individuals or small chains the

following stores and they are still being operated either by the purchaser or a successor:

1700 Block North Vermont, Los Angeles
 5000 Block Fountain Avenue, Hollywood
 866 North Virgil Avenue, Los Angeles
 2200 Las Tunas Boulevard, Temple City
 625 Garfield Avenue, Monterey Park
 2225 Whittier Boulevard, Whittier
 2260 Colorado Boulevard, Pasadena
 6625 Foothill Boulevard, Tujunga
 1849 South San Gabriel, San Gabriel

Thrifmart has long made it a practice when it decides to discontinue one of its stores to give one of its older employees a chance to take it over and run it as his own business. Other chains such as Alpha Beta and Mayfair have sold a number of their stores to individuals or small chain operators. Obviously, it is not possible for the average person just starting his own business to open up in a new, large supermarket. It never was. But in my opinion the man with experience and know-how can start out in a small way and prosper in the grocery business just as easily today as one could thirty years ago. The individual grocer, whether he operates a small store or a supermarket, who makes himself a part of his community and who makes a point of friendly and courteous service can draw customers just as easily as the large store of one of the chains. But, of course, it is not enough simply to draw customers. The operator, whether single store or chain, must have adequate financing and be able to manage the use of his money in order to keep his business solvent and profitable. He must be able to organize his store and his employees to obtain maximum efficiency at minimum cost. This includes the handling of merchandise with the least effort, time and expense. He must have some knowledge of when, what and how much to buy, and know how to price competitively, and at the same time cover the cost of his merchandise and expenses. He must also be able to interest customers through advertising or attractive window and interior displays, and he must be able to provide the special services which appeal to cus-

tomers in his particular community. In addition, he must be able to keep complete and current financial and other records, select and train the proper personnel, and, above all, he must be a good manager. Ambition and money are not enough to succeed in the grocery business, or in any other business, in my opinion. The principal requirement is sound management.

I have recently read a study of small business which was published by the United States Small Business Administration entitled "The First Two Years: Problems of Small Firm Growth and Survival." That book states:

"The haphazard, unplanned way in which a number of firms were established doomed some of them from the start. In some cases, the initial decisions were so wrong that the owners themselves recognized them shortly after opening and closed their doors rapidly before the damage became extensive. A number of other owners, however, were not aware of the inevitability of failure and continued in operation until their resources were exhausted."

Those of us who have been in the grocery business in the past 35 years have seen many examples of just this sort of failure in the grocery business. But we have also seen very many examples of persons who knew the facts of the business start out from scratch and become highly successful. There always has been and there is today strong competition in the grocery business in this area. The rapid growth in population has given great opportunity to those with know-how and ability, and the future population growth which we can expect in this area means to me that these opportunities will continue to exist for a long time. This is a business in which it is easy to enter and to prosper and succeed, but it is also easy to fail in this business whether one is a single store operator or a chain if ability and know-how are lacking or management is not sound. If I and the many others who got started as single store operators in the 1930's or 1940's or 1950's could, as we did, compete successfully with the chains, the only thing that can prevent someone starting out today from doing the same thing is lack of ability, initiative or know-how.

Reasons for the Merger With Von's

I had both personal and business reasons for welcoming the opportunity to merge Shopping Bag with Von's. In the fifteen years following World War II I gave virtually all of my attention to building and running a successful business. I think in this time I may have expanded the number of stores too rapidly without giving sufficient consideration to developing a strong staff to take over if something should happen to me. Although Shopping Bag had become a 38-store chain, I made all of the important decisions concerning operations, new store locations and the like. I had capable men working with me but they, like myself, were getting along in years and I began to have doubts as to whether the business would continue to operate successfully if something happened to me. I was also concerned by the fact that the Shopping Bag net profits in relation both to assets and to sales were considerably lower than those of other comparable chains. I was concerned that if I should die a very substantial part of my stock would have to be sold to pay estate and inheritance taxes and that a fair price for my stock would not have been obtained and management of the company after my death might not be adequate. Although stock of Shopping Bag was publicly held, the great bulk of it was owned by me and members of my family, and there was not an active market in the stock. I was conscious of the fact that having spent a lifetime building the business without having planned carefully for management succession, a decline in or failure of the business following my death could have very bad effects on my family, the employees and the community. In addition to all of the foregoing, I was frankly getting a little tired of the day-to-day problems and wanted to start taking life a little easier. These were the personal reasons which led me to favor the merger. There were equally good business reasons. I owed an obligation to the people who had invested in my company to see that they got an adequate return on their investment and that it would continue to be secure. I have known the Von der Ahe family for 34 years and I had great confidence in their integrity, their business ability and their fairness. I also knew they had a very able and deep management staff that could continue to run the business successfully. Von's net

after taxes both in relation to assets and net profits was one of the best in the entire industry. They were an outstanding and successful group in whom I had great confidence. Moreover, the Von's stores were located primarily in the west and south portions of the area and those of Shopping Bag were located primarily in the east and north sections. There was hardly any area where the stores of the two companies competed for the same customers. It seemed apparent to me that a merger with Von's would permit savings in warehousing and advertising, be beneficial to Shopping Bag stockholders, and give greater security to my family and the Shopping Bag stockholders.

As a result of the merger we have been able to get the Von's stock listed on the New York Stock Exchange and now there is a much wider and better market for the stock.

The fact is that I considered the merger with Von's to be in the best interest of Shopping Bag and its stockholders and of myself and my family, and this has proved to be a sound judgment. I have no doubt that I could have arranged to sell or merge Shopping Bag with one of the very large national chains such as Kroger, Food Fair, National Tea, ACF Wrigley or others which are not yet in this market. Food Fair has now entered this market by operating supermarkets in various new discount houses and by operating the bankrupt Fox Markets. Since Shopping Bag merged with Von's, American Stores, the nation's fourth largest chain, has also entered this market by acquiring Alpha Beta. However, I preferred to deal with Von's, a local chain with local origins, because I knew the management of Von's and had complete confidence in them.

Naturally I am troubled by the pending action. Perhaps there would have been no action filed if I had sold out to one of the large national chains I have mentioned. I am advised that the Department of Justice investigated the merger of Alpha Beta and American Stores in 1961, but it did not file any action challenging the legality of that merger. I do not think that that merger lessened competition at all, and I am equally certain that the Von's-Shopping Bag merger did not lessen competition in the slightest. If anything, our stores have been upgraded and have become more efficient competitors. Obviously I am not an expert on the merger law but I recognize that if a merger did in fact give a company

some power to control prices or eliminate competitors or control the market it should be prevented. But our merger with Von's does not give us power at all over competition or prices or any dominant position. There are actually thousands of strong concerns in this area and in my opinion the chain, whether large or small, has absolutely no competitive advantage over the able single store operator who has membership in Certified Grocers or A. M. Lewis Orange Empire. If this were not true, then in my opinion only A & P, Safeway and Ralphs would exist in this market today because all were strong chains when the rest of us started doing business in the 1930's, 1940's and 1950's. The undeniable fact is that we were able to and did compete successfully against stores of these chains, and it is equally true that the single store operators and smaller chains today can and do compete successfully against stores of Von's-Shopping Bag.

I do not see how it would have been more beneficial to competition for Shopping Bag to sell to some large national chain, or to liquidate, or to go into probable future decline, and yet these were the probable alternatives to the merger with Von's. Certainly I would not want to take the responsibility for running Shopping Bag again if this merger should be held to be illegal.

From my own experience in the industry for 37 years, I do not think there is the slightest possibility that there will ever be just a few or, for that matter, even a few hundred companies doing business in this area. The chains such as Von's, Safeway, Ralphs, Alpha Beta, Thriftmart and many others furnish the basic training ground for the persons who will, as they have for years, start their own businesses and prosper. Fortunately, it is not difficult to get started in this business and because of the buying advantages available through Certified Grocers the individual operator is very nearly if not completely on an equal footing with his chain store competitors. Some will fail just as some chains have failed and will fail, but many others will succeed just as many have in the past. Competition in this business has always been vigorous and healthy and I cannot foresee that situation changing at all.

The Reduction in Numbers of Stores

There has been a gradual disappearance of a large number of the older very small stores which characterized this market when I first came here in 1926. The obvious reason for this is the development of supermarkets, greater use of the automobile, the public demand for a wider choice of goods at a convenient location and at a fair price. Many of the older, very small neighborhood groceries have continued to survive but their numbers are naturally declining. On the other hand, in the past 15 years particularly, supermarkets have been constructed in great numbers in this area to serve the needs of the increasing population. There are few if any localities in this area, in my judgment, where the housewife does not have a choice of a number of competing stores within convenient shopping distance. The decline in the number of small stores has not in my opinion resulted in lesser competition. Just the opposite is true. The fact is that in the days before the widespread use of the automobile and the development of the supermarket, the small neighborhood grocery store frequently had no competition at all and therefore pretty much of a monopoly of the business in the immediate area of his store. I have been advised that the government attorneys contend that this gradual disappearance of the small stores means there is a tendency to monopoly in the grocery business in this area. I am certain that no one who has the slightest experience in the grocery business would agree with that contention.

W. R. Hayden.

Subscribed and sworn to before me this 19th day of February, 1963.

Elizabeth Folger, Notary Public in and for said County and State, [Notarial Seal.]

My Commission Expires Sept. 19, 1965.

AFFIDAVIT OF THEODORE A. VON DER AHE

STATE OF CALIFORNIA,

County of Los Angeles, ss:

THEODORE A. VON DER AHE, being first duly sworn, does hereby depose and state as follows:

I am the President of Von's Grocery Co., hereinafter referred to as "Von's". My father, Charles Von der Ahe, is Chairman of the Board of the Company; my brother Wilfred is Executive Vice President; W. R. Hayden, who was formerly the President of Shopping Bag Food Stores which merged with Von's in March of 1960, is Senior Vice President of Von's, and his brother, W. D. Hayden, is Assistant Operations Manager of Von's.

Background in the Grocery Business

I was virtually born into the grocery business. In 1908, when I was born, my grandfather, A. O. Luer, was running a very small grocery store at the northeast corner of 23rd and Magnolia Avenue in Los Angeles. My father, Charles Von der Ahe, worked in this store as a clerk. Mr. Luer subsequently opened a second market which he later, in 1914, sold to my father in order to enter the meat provisioning business. I worked in my father's store (and later stores) during after-school hours and on Saturdays, holidays and summer vacations until the year 1927 when I left day school (second year pre-legal) to run my father's grocery warehouse at 6100 South Central Avenue, Los Angeles. I continued to act as warehouse foreman until 1929 when my father sold his chain (which by then consisted of 87 grocery concessions in small stores) to MacMarr Stores. I believe it is of interest that the total gross sales of my father's chain of 87 grocery concessions were in the neighborhood of \$3 million annually and that today there are a large number of single supermarkets in this area which do that much gross business in a year.

When my father sold his chain to MacMarr Stores, I went to work for MacMarr Stores as "Short Buyer", that is, the person in charge of replacement buying. MacMarr Stores was a chain which was built up in 1927-1929 by acquiring a

number of western chains such as that of my father's, E. A. Morrison, Humpty Dumpty, Crown Emporium and others in the Los Angeles area. I believe E. A. Morrison had from 70 to 80 stores and Humpty Dumpty had about 25 when they sold out to MacMarr Stores. In 1931 MacMarr Stores sold out to Safeway which had earlier acquired the Piggly Wiggly chain, and so by 1931 Safeway had over 1000 stores in this area.

In 1930 I resigned my job with MacMarr Stores so that I could devote more time to my law studies at night at Loyola Law School. During the daytime I worked for Henry Bodkin and Jerry Giesler, attorneys. I graduated from law school in 1931—LLB, 1932—LLM. But I did not pass my bar examination and these were depression times, so I decided to go into the grocery business which I knew something about. Accordingly, in March of 1932 my father put up \$2500 which we used to open a grocery department in a very small (50 feet by 95 feet) store in Lynwood, California. In most stores in those days the grocery department, the meat department and the produce department were all separately owned and operated. The sales in this store were from \$2000 to \$2500 per week.

As an example of the ability of the individual operator to compete with a chain, directly across the street from this Lynwood store was a Pay 'n Takit store, one of the stores of the Pay 'n Takit Division of Safeway. I was able to and did meet the prices of this Pay 'n Takit market and I am sure did a better business than it did. As a matter of fact, when the Long Beach earthquake of 1933 destroyed our Lynwood store and also damaged the Pay 'n Takit, they moved out of the building and never came back to compete with us. We then bought this building and moved our store into it and Western Auto Supply took over our former building.

When the 1933 Long Beach earthquake occurred and completely collapsed our Lynwood store, it was several days before we could do anything about it because martial law had been declared in the area. As soon as we could, however, we got approval of the City Engineer to jack up the roof of the store with heavy jacks and then build up the walls around it and open for business. We arranged to jack up the roof and restore the building, and our suppliers were good

enough to replace the merchandise which had been destroyed. After the earthquake some other stores in the area increased their prices, but as soon as we were able to open we ran a "hot" ad which announced special reduced prices on a number of items. This ad attracted a lot of new customers to our store. I believe these customers were grateful that we did not attempt to profiteer from the situation and they remained good customers, both before and after we moved across the street to the new location. As a matter of fact our gross, which prior to the earthquake had run between \$2000 and \$2500 per week, jumped to \$3500 per week and remained around that figure thereafter.

In December of 1932 the partnership of my father, my brother Wilfred and I opened up the grocery concession in the small Davidson's Market in North Long Beach, California. This also was destroyed by the 1933 earthquake. In 1934 we opened another grocery concession in a market at Beverly Boulevard and Crescent Heights, Los Angeles, and also constructed a market at Third and Kenmore in Los Angeles. Our business prospered because of the hard work and sacrifice that I and members of my family put into it. In the years following and prior to World War II, our partnership developed as follows:

1. The grocery concession in the small El Adobe Market on Hollywood Boulevard, Hollywood. This concession we later sold about 1937. It is still being operated successfully as a grocery store.

2. The grocery department in the City Food Mart at Yucca and Argyle in Hollywood, which we later disposed of about 1938.

3. The grocery and delicatessen concession in a market at 320 East Manchester, Inglewood. This we later sold also.

4. The master lease on a market building at 1020 West Manchester Boulevard, Los Angeles. We later sold this store and it is still being operated as a market.

5. Construction of a market at 1020 South Fairfax, Los Angeles.

6. Construction of a market at 8th and Irolo, Los Angeles.

7. Lease of a market at 9th and Alvarado, Los Angeles.

8. Purchase of a market at Olympic and Crenshaw.
9. Construction of a market at 1500 West Pico, Los Angeles.
10. Construction of a market at 5100 South Vermont Avenue, Los Angeles.

In most of the early markets we operated the grocery department only. The meat, bakery, delicatessen and produce departments were operated by others. Commencing in 1939 we started to run the produce departments which, up to that time, had been operated by others. We also began operating the meat and delicatessen departments.

During World War II there was a building moratorium, but following the war we opened a large supermarket at Crenshaw and Santa Barbara, Los Angeles. With this store we were able to demonstrate to developers our ability to operate a large market, and we thereafter had no difficulty in securing other locations, such as Pico and Westwood Boulevard in West Los Angeles in 1949, a store in Van Nuys in 1950, and thereafter additional stores which were all of the large, supermarket type, as contrasted with our first twelve stores which, for the most part, were very small.

I take pride in the fact that in the 28 years from 1932 to 1960 my family and I had developed a chain of 28 stores doing business in this area and giving employment to 2150 employees. I do not suggest that we were unusual, because anyone else who wanted to put in the hard work and self-sacrifice could have done the same thing, and many did. Market Basket was formed in 1930 and developed in much the same manner, and so did Shopping Bag, Alexander's, Boys, Alpha Beta, Thriftmart, and others. Shoppers Markets have grown from a one-store operation in 1946 to a 14-store chain. Hughes Markets (13 stores), Pantry Markets (11 stores), Michael's Markets (7 stores) and many others are late comers in the business, starting in the 1950's or 1960's, and they have grown and prospered.

Competition in the Retail Grocery Business Today

According to the Board of Equalization figures obtained by the Government in this case there were 4,741 grocery stores in Los Angeles and Orange Counties in 1961. 3818 of those stores were separately owned and operated as

so-called independent stores. According to Godfrey Lebhar of Chain Store Age and Business Guides, Inc., today there are 150 concerns which operate two or more stores in the Los Angeles metropolitan area. By comparing these figures, it is apparent that the grocery business in Los Angeles is conducted by 3968 separate concerns operating more than 4,700 stores. I am not an economist but I am amazed that the Government economist could call this a "concentrated" industry in this area.

It appears to me that the trend in grocery retailing in this area is toward a lesser degree of concentration and the figures developed by Mr. Lebhar confirm my opinion. Mr. Lebhar points out that in 1953 there were 96 concerns which operated two or more stores each. By 1962 there were 150 such concerns. The smallest of these companies—those with only two or three stores—showed the greatest numerical growth, having increased from 56 in 1953 to 104 in 1962.

The number of chains with ten or more stores also increased in number from 10 to 24 in the ten years since 1953, according to Mr. Lebhar. It is interesting to note that of those 24 concerns:

- (1) 19 are of local origin and even today all but a few of their stores are located in Los Angeles and Orange Counties;
- (2) 14 had less than 10 stores each in 1953; and
- (3) 7 were not in business at all as chains in 1953.

In all, since 1953, 174 new concerns operating two or more stores each have entered the grocery business in Los Angeles. While some of them have failed, some have cut back their operations, and some have been acquired by other concerns, no less than 103 of them remain today as new, independent, competitive factors.

Many of these firms, together with the firms that existed in this area prior to 1953, have expanded their businesses by opening new stores. I doubt there is a single Von's store which faces competition from fewer stores in its immediate trading area today than it did ten years ago. On the contrary, in the majority of areas now served by a Von's store we are facing competition from a greater number of stores than at any time in the past. Competition from both new

and old stores operated by both new and old concerns, whether they be independents, small chains or large chains, has increased, in my opinion, in the last decade, and it certainly has not diminished since our merger with Shopping Bag in March 1960.

Thus, I was surprised to see, and I question the accuracy of statistics obtained by the Government's attorneys from the California Board of Equalization which indicate that there are fewer grocery stores now than there were in 1948. If these figures are in any way accurate, however, I am confident that the following factors more than any others have contributed to the decline in number of stores:

1. Over the past several years the average housewife has indicated by her shopping habits that she likes to shop in large supermarkets. This has had its effect on the small corner grocery stores which were about the only type of stores which served Los Angeles in the years when I first started in the grocery business. As a result, both chains and independents have built larger stores which serve more people, and a number of smaller stores have, at the same time, been closed down. For example, over the last several years, Safeway has closed down a large number of its smaller stores and has built larger supermarkets to take their place. A & P in 1940 had approximately 15,000 stores and now it has about 4,000 which do a greater annual gross business. Because these larger stores serve more people than two or three older, smaller stores, Safeway has fewer stores today than it did ten years ago, but I'm sure that its sales are greater than in prior years. This trend toward larger stores has been reflected throughout the Los Angeles metropolitan area and has probably resulted in a decline, at least in certain areas, in the number of grocery stores.

2. The vast freeway system which has been constructed in the Los Angeles metropolitan area since 1948, together with other types of public improvements such as schools, municipal buildings and the like, have undoubtedly caused the closing of a number of stores particularly in East Los Angeles and the southwestern section of Los Angeles County, either by the actual condemnation of the store itself, or the destruction of the homes which it served.

Also, I have some reason to doubt the accuracy of the

Board of Equalization statistics, and in any case, I am confident that those statistics do not give a true picture of business success or failure, for the following reasons:

1. Government Exhibit No. B7(b) filed in connection with their Motion For Summary Judgment is a chart prepared by the Board of Equalization which is entitled "Analysis of the Gross Sales of the Grocery Stores Opened In 1960 and Closed by November 15, 1961." This chart shows a total of 81, of which 63 are shown to have had annual sales of under \$500,000. My attorneys then asked the Board of Equalization to break this figure of 63 down further and they were supplied with the chart which I am attaching as Exhibit A to my affidavit. It will be seen from a reference to this chart that someone in the Board of Equalization cannot add very well because the next to last column totals 62 instead of 52 and the last column totals 73 instead of 63. It will also be seen that 66 of the 73 had annual sales of under \$200,000 and 29 of these had annual sales of under \$50,000. A supermarket in this area has sales from \$1 million to \$7 or more million, so a store with annual sales of under \$200,000 is obviously a very small store, and one with annual sales of under \$50,000 can hardly be classified as a grocery store in this day and age. If you figure a net of 3% after taxes, the \$50,000 gross sales would produce an income of only \$1500 a year.

2. Government Exhibit B-6 filed with its Motion For Summary Judgment is a chart entitled "Grocery Store Openings and Closings in the Los Angeles Metropolitan Area for the Calendar Year 1960." This chart shows that the chains (defined as *two* or more stores) had 119 openings and 42 closings and there were 128 openings and 260 closings by an independent (defined as a single store operator). I think it is of interest that there were more openings by independents than by chains. I think it is also of interest that our attorneys asked for and obtained the names and addresses of the stores listed on the Government chart which the Board of Equalization records indicate were closed, and this list of names and addresses contained 24 duplications, 15 which were not grocery stores, 16 where there had been no closing at all, 71 where a successor had purchased the store, 19 which had moved to a new location,

31 closed because of a freeway, and 18 closed because of the death, retirement or illness of the owner. This information is discussed in greater detail in the affidavit of Mr. Pasini.

3. I have read the proposed stipulation as to testimony of John B. Marshall of the State Board of Equalization which the Government has submitted to our attorneys and this statement illustrates to my mind the fallacy of drawing conclusions from bare statistics. This statement refers to plaintiff's Exhibits 33 and 34 and concludes in paragraph 6: "These reflect the extent to which the number of chain grocery stores are increasing while the number of independent grocery stores are decreasing in an area of increasing population." The difficulty with that conclusion is that if a single store operator acquires a second store, Mr. Marshall would conclude that this means a decrease in the number of independent grocery stores, because he defines a chain as a concern "filing consolidated returns for two or more stores." It frequently happens that a successful single store operator will open a second store, but simply because by that action he becomes a "chain" it does not follow to me that the number of independent grocery stores has decreased.

When the owner of a small Mom & Pop store dies or retires it probably often does mean the closing of an independent simply because there are better opportunities for the children than running a small Mom & Pop store. I have read the report of the Temporary National Economic Committee published in 1940 and it is apparent to me from that report why a large number of small grocery stores have been closed in the last twenty years. That report states:

"Even more astonishing is the fact that out of a total of about 305,000 grocery and combination stores in the United States, more than 130,000 have sales of less than \$5,000 per year. Many of these are operated with family labor, and do not represent the entire source of family income. Also, they provide the families of the proprietors with food at wholesale prices. But it is nevertheless self-evident that they cannot sell at reasonable prices to consumers and at the same time provide their proprietors and employees with what are usually thought of as reasonable wages." (p. 64) (Temporary National Economic Committee Monograph No.

35 entitled "Large-Scale Organization in the Food Industries," written by A. C. Hoffman, Principal Agricultural Economist, Bureau of Agricultural Economics, United States Department of Agriculture (Senate Committee Print, 76th Congress, 3rd Session, Washington, D. C., 1940).)

There are other reasons why I doubt that the Board of Equalization statistics can be used as any sort of guide to the success or failure of independent grocers in the Los Angeles metropolitan area. I know from my experience in the retail grocery business and from my observation of the success of a vast number of grocery concerns that there is a definite place for, a need for and plenty of opportunity for the single store operator, the small chain and the large chain. None of these types of concerns is at an inherent disadvantage in its attempt to wage competition with the others. One of the reasons for this is the advantages which accrue to the smaller concern by reason of its membership in cooperative buying organizations such as Certified Grocers of California, Ltd., and the Orange Empire Co-op, which is sponsored by A. M. Lewis, Inc. Through such cooperatives, the smaller concern can purchase its groceries as cheaply as any chain which buys directly from suppliers, and at the same time avoid many of the costs and headaches which the direct-buying chain must incur in conducting its own buying, warehousing and distributing systems. Even on items which co-ops do not handle, such as meat and produce, the independent is able to do as well as the chain. Indeed, it is because of the fact that meat and produce purchases can be made on equal terms by both chain and independent that cooperatives have not found it necessary to handle those products.

For example, there is very little variation in the price for which meat can be purchased, and meat is not an item which is in short supply. Therefore, whether the meat is being purchased by a buyer for a large chain or by an independent grocery, the price is almost always the same. It rarely varies by more than a few pennies, and of course the independent is able to buy meat of the same quality as a chain.

Also, the independent is able to do as well as the chain in

its purchases of most produce, and particularly in its purchases of perishable produce which often prove to be the most important in any produce department. As a matter of fact, with respect to these items, the independent and small chain is frequently able to purchase the same quality produce at a much cheaper price than the larger chain. The larger chain has a complicated distribution system. It must have its produce in each of its stores by the time those stores open every morning. In order to accomplish this, the day's produce must be purchased before 6:00 A.M. so that it can be placed on the chain's trucks and distributed to the stores at an early hour. The independent or small chain, on the other hand, does not have the same distribution problems. The owner can stay in bed until after 6:00 A.M., and then shop at what is known in the produce trade as the "late market". The quality of produce available on the late market is almost always as good as earlier in the day. The produce commission broker knows that his fruits and other perishables will not last until tomorrow, and they must be sold. His bigger customers, the chains, have already purchased the quantities they want. Under these circumstances, the independent is in a good bargaining position and can often purchase his perishables at prices which are much lower than the chain paid early in the same day. Also, the chain, with its large requirements, cannot possibly check every crate of produce which it purchases and instead must rely upon sample inspections. The independent has less to purchase and very often he can and does personally inspect every item of produce which later appears in his store. This very often means that an independent will have better quality produce than can be found in a large chain store.

I personally believe that the direct buying chain can do better than the independent on the purchase of items of "hard" produce, such as potatoes and apples. Others do not agree with me entirely, because we do have a warehousing cost. Market Basket and some others of the larger chains, for example, have regularly purchased their "hard" produce through the commission merchants. Apparently they think they can do just as well by purchasing in this manner, and if they can then so can the independent.

By reason of his cooperative membership and his ability

to buy meat, milk and most produce on terms as favorable as any chain, the independent need not lose customers because of his prices. Van de Kamp bakery concessions are available to chains and single store operators alike. But in order to succeed any store, whether chain or independent, must be able to lure the customer inside the store. In this connection I believe that a single store operator has certain advantages over a chain and that a chain has certain advantages over a single store operator. None of those advantages is decisive, and an able and aggressive grocer can attract his share of the business by taking full advantage of his opportunities. Also, from my experience I know that an independent operator has a better opportunity to control his costs. He is in a position to personally supervise or actually conduct every phase and aspect of his business, and as a result he is better able to watch pennies and control costs. The chains must work through supervisors and managers and cannot be as efficient as the individual owner who is on top of the situation. It must be recognized, however, that the independent has certain disadvantages. For example, a single store operating in a community which has suffered economic setbacks due to strikes or large layoffs, as sometimes occurs, for example, in the aircraft industry, may be injured. Also the chain has an advantage in getting into shopping centers because of its being a better credit risk and being better known.

I believe that personality, service, courtesy and friendliness can go a long way toward attracting customers. We at Von's urge our store managers to stress these qualities in their stores, but at the same time we recognize that no store manager in a chain store can develop the same personal relationship with his customers, his employees, and with his community as the independent operator. On this score, the independent has an advantage over the chain.

On the other hand, I think that the chain has the advantage of being able to exploit by institutional advertising and otherwise a name which becomes familiar to customers and potential customers throughout the area it serves. Von's, for example, advertises in metropolitan newspapers. In this way and by word of mouth Von's becomes a name that is known to shoppers throughout the Los Angeles metropolitan area. Therefore, when Von's opens a new store, it

can expect that potential customers in the surrounding areas will have heard of its name. This gives us an advantage over the independent who opens up a store with no expectation of being known in advance, although as I have said he has a better opportunity to become a part of his community and to become well known in it as time goes by.

Because Von's has stores in many communities in the Los Angeles metropolitan area, Von's problems are area-wide. The single store operator or the small chain, on the other hand, has only one or a few communities to worry about. The chain by reason of its size and organization is not as mobile or responsive to competitive conditions in any given isolated area and the aggressive, competent independent can, for that reason, out-manuever the chain in meeting or creating local competitive conditions.

Therefore, sometimes size works for a chain and sometimes against it. In some ways having one store is an advantage, in others a disadvantage. But I am firmly convinced that if a grocer, whether he operates 70 stores, 7 stores or only 1 store, can take advantage of his opportunities he can succeed. There is no important advantage or disadvantage in the grocery business by reason of size. If there were, one would not find 3800 single store operators in this area nor would the growth, expansion and success of smaller concerns have taken place.

As one experienced in the industry and as a citizen I do not subscribe to the idea that there is something wrong with building a successful large chain. The fact is that the grocery chain offers very attractive career opportunities for capable people. Von's, for example, employs 8 Division Managers whose salary ranges from \$18,800 to \$38,500, 6 District Managers whose compensation ranges from \$17,400 to \$18,300, and 30 supervisors whose annual compensation averages from \$12,000 to \$16,700. Each manager of a Von's supermarket earns on the average of \$10,800 to \$13,250, which is a higher range than the national average for most of the professions. It is a fact of life that many people prefer to work for others rather than open their own business and, in my opinion, opportunity is wide open in the retail grocery business in this area, either as a salaried employee or opening your own business.

I have no doubt that if I desired to open my own single supermarket and run it myself I could make more money for myself than my compensation as President of Von's Grocery Co. The single store operator who pays attention to his business, who makes an effort to get to know and render good service to his customers, and who is alert and knowledgeable, can do every bit as well, if not better, for himself financially than can the president of many of the chains. In fact, I have advised my son, who is now working for our company, that as soon as he has the requisite training and experience, he should go out and get a store of his own.

The Matter of Market Shares

Prior to the merger, according to statistics I have seen, Von's had about 4% of total grocery store sales in the area and Shopping Bag had only slightly less than 4%. I believe we ranked third and Shopping Bag fifth in this respect, and we are now second to Safeway, having moved ahead of Ralphs by reason of the merger. As I have stated, I am not an economist but I do know this business and I can flatly state that it would not be logical at all to equate market shares with market power in this business in this area. Competition in retail sales in this business is necessarily on a store-by-store basis, and, as I have stated, numbers of stores is not an important factor in this competition.

In this market area we now have A & P, the largest national chain, Safeway Stores, the second largest national chain, Acme Markets Inc. (operating locally as Alpha Beta), the fourth largest national chain, Food Fair, the sixth largest national chain, Mayfair, a large multi-state chain, Lucky a large multi-state chain, a good number of large regional chains such as Ralphs, Food Giant, Thriftmart, Market Basket, a large number of medium-size chains, such as Shoppers, Hughes, Pantry, Alexander's and others, and thousands of independents or small chains backed up by strong cooperative buying organizations.

These local chains, including Von's, have grown and prospered over the years in the face of much larger market shares of Safeway and Ralphs and the fact is that over the past twenty years I am sure that the market shares of both

Safeway and Ralphs have declined. I reiterate market share in retail grocery sales in this area is not the equivalent of market power.

The Shopping Center Problem

I have mentioned some of the respective advantages in competition possessed by the single store operator, by the small chain, by the larger but local chain, and by the national and regional chains. There is one area wherein some of the larger chains in this area do have an advantage over small concerns and, for that matter, over some large concerns whose financial credit rating may not be good, and that is the greater ability to get choice locations in new shopping centers. In recent years there has been a trend to develop large shopping centers containing a department store, a variety store, a drug store, a supermarket, a restaurant, dress shops, haberdashery, cleaning establishment, and other concerns. The developer of such a shopping center can usually obtain 100% financing from insurance companies if he leases to a concern with a Dun & Bradstreet AAA credit rating, but, I understand, only about 50% financing if the lease is to a chain or independent which has a lesser credit rating.

The merger with Shopping Bag did not help Von's in this respect because it had an AAA credit rating before the merger.

I have learned from various trade papers that the Small Business Administration has set up a program to help independent supermarket firms obtain leases in new shopping centers by lending local development companies up to 80% of the necessary funds to construct a center that will be occupied by small firms, and has defined a grocery concern as "small" if its dollar volume is less than \$2 million annually. Henry Bison, the general counsel of the National Association of Retail Grocers of the United States (NARGUS) has criticized these standards as unrealistic (see *Supermarket News* for October 17, 1960) and I agree. I am certain from my experience that there are very many small concerns with sales in excess of \$2 million who need and should have the opportunity to get into new shopping centers.

A number of bills have been introduced in the Congress to permit the federal government to guarantee leases in shopping centers made to small concerns, and I have read reports concerning hearings held by the Select Committee on Small Business of the House of Representatives on such proposed legislation, but the Congress has not enacted such legislation. It is my opinion that the enactment of such legislation would be desirable and helpful to very many sound but small operators. I do not see how the insurance companies, or the shopping center developers, or the larger chains can properly be criticized for the present situation (and certainly the merger of Von's and Shopping Bag has not had and could not have any effect on the problem) but it is an area where, in my opinion, the smaller operator is at a disadvantage, and only the Congress can help him.

Certified Grocers of California

My company became a member of Certified Grocers of California, the retailer-owned cooperative buying organization, in 1934. We terminated our membership in 1949. At that time Von's was a chain of 16 stores. Much of the success of our business is directly attributable to our membership in Certified from 1934 to 1949, because Certified's buying power enabled us to obtain our groceries just as cheaply as the direct buying larger chains. I was elected to the Board of Directors of Certified in 1936 and became Chairman of the Board in 1945, a position I held until my resignation in 1949.

At that time Certified had a policy (which it has since abandoned) that the member must make 100% of his purchases through Certified of the grocery items which it handled, and we felt that if we had a warehouse of our own, we could control our inventory better, purchase the large quantities we might want of a particular product to cover a special promotion we might want to run in our stores, and buy a particular product in larger quantities to protect us against an anticipated price increase. My father, my brothers and I therefore decided to build a warehouse and do some direct buying. This forced us to resign from Certified. Many others, of course, did not agree with our point of view and did not want to take on the problems of operating a warehouse. These, including Shopping Bag, con-

tinued to stay with Certified even though they had more stores than Von's did.

I believe that it is to Von's advantage to do its own direct buying and warehousing, particularly because of the inventory control it gives us. Others disagree with me. But I do not think any experienced grocer in this area will disagree with the fact that the Certified membership (which includes numerous single store operators, small chains and larger chains) which buy their groceries through Certified get them on the market shelf just as cheaply as does the direct buying and warehousing concern, such as Von's. I have on several occasions seen a sign in the window of a very small store at Beverly and Normandie in Los Angeles which states:

"Our shelf prices are as low or lower than any chain mkt. because we are a member of the largest co-op buying power in the world."

The reference obviously is to Certified Grocers, although from reports in the trade papers the A. M. Lewis Orange Empire Co-op is not far behind Certified. The Federal Trade Commission Staff Report on its Economic Inquiry Into Food Marketing, January 1960 (at page 179) states that the wholesale sales of Certified to its members and the estimated retail sales by Certified's members were as follows in the years 1948, 1954 and 1958:

	Wholesale Sales by Certified To Its Members	Retail Sales by Members of Certified
1948.....	\$ 86,829,000	\$ 382,000,000
1954.....	197,717,000	858,000,000
1958.....	338,957,000	1,390,000,000

This Staff Report (p. 181) further states as to Certified:

"* * * This cooperative chain follows the corporate chains, A. & P., Safeway, and Kroger, as the fourth largest food retailing organization in the country—accounting for an estimated 3.1 percent of national grocery store sales and 2.8 percent of food store sales. It must be borne in mind, however, that a cooperative chain is not a single organization in the sense that a corporate chain is one. * * *"

The Staff Report does not give comparable figures for the A. M. Lewis Co. It states (p. 179) that "Alfred M. Lewis Co., a large Southern California wholesaler sponsoring the 'Orange Empire' group of stores and often called a cooperative, is not so classified in this report, since the shares of stock owned by its retail customers do not carry control." However, a recent report by A. M. Lewis, reported in the Southern California Grocers Journal for September 27, 1962, stated that Orange Empire had wholesale sales to its members of \$12.5 million in 1945 and by 1962 its wholesale sales were \$321 million.

Certified Grocers has a coffee processing plant, a bean packaging plant, and a frozen food warehouse in addition to its two huge grocery warehouses. Its transportation fleet comprises approximately 340 tractors and trailers. Members of Certified can obtain insurance at a cheap rate through Certified and can obtain assistance in financing the purchase of new equipment and facilities through Certified. In addition, Certified has seven well-trained men employed on a full-time basis to assist Certified's members with grand openings, special promotions, new store locations, store layout and display, and advertising and accounting problems. Certified's advertising department keeps the Certified member advised of all advertising and promotional allowances offered by suppliers, and the advertising department also assists Certified members with advertising mats, layouts or display materials. Finally, Certified has the most modern and up-to-date electronic data processing systems which helps the Certified members to eliminate out of stock conditions in their stores.

The existence of organizations like Certified and Orange Empire, in my opinion, has been and is the reason for the success of the independent and small chain in this area and made possible the growth of organizations such as Von's and Shopping Bag and many others.

The continued and successful existence of Certified makes ridiculous, in my opinion, the government suggestion that there is a possibility that only a few chains will sometime, somehow, dominate the market. With four national chains, two strong multistate chains, a number of large local chains, very numerous smaller chains and hundreds of independents operating successfully in this dynamic area, it ap-

pears obvious to me that in the future there will continue to be, as there are now, literally hundreds of separate concerns doing business in this area. This is not a difficult business to enter and there is, and I am convinced there will continue to be, plenty of opportunity in it for those who are willing to work as I did to develop a business. I do not mean to suggest that anyone can go out and build or buy a supermarket for little or nothing—just as one cannot become a manager of a store or an executive of a business overnight. But leases of existing stores are always available and one who has had experience can obtain such leases and prove his ability. Many of my friends in the business have done just this—in fact, there are many who have taken over stores which the larger chains have given up as unprofitable and have been very successful in running these stores on their own.

Changes in the Marketing of Retail Groceries

In my lifetime in the grocery business there have been many innovations and changes. I have witnessed the development of the supermarket which has resulted in the replacement of a number of small stores. Safeway, for example, once had over 1000 small stores in this area and today it has approximately 200, and while Safeway's percentage share of the total sales in the area has, I am sure, been greatly reduced, I am sure their total gross sales in the area are very much greater. With the supermarket came self-service, greater sales per square foot and greater variety of choice at a lesser cost to the customer. New products, rapid developments in packing and merchandising, a rapidly increasing population, the increased use of the automobile and moves to the suburbs are just a few of the constantly changing conditions and circumstances which the grocer in this area has had to be alert to meet, and take advantage of in order to be successful.

A relatively few years ago the "Los Angeles market area" was generally considered to be the City of Los Angeles and the immediately surrounding communities; that is, the area where a number of stores could efficiently be served from a single warehouse. More recently it has generally come to mean Los Angeles County and Orange

County. But with the development of our freeway systems more and more concerns are building stores in Santa Barbara, Ventura, Kern, Riverside, San Bernardino and San Diego Counties as well. Shopping Bag had two stores in San Bernardino County prior to the merger, and since the merger we have opened new stores in Ventura and San Diego Counties, and one presently under construction in Riverside County. There is little doubt in my opinion that the Los Angeles market area in a very short time realistically will be considered to extend from Santa Barbara-Bakersfield on the north, south to the Mexican border, and west to east from the Pacific Ocean to the desert.

In the past two or three years large discount houses which sell virtually everything and include a large supermarket under their roof have become prevalent in the area. There are now at least 25 of such discount houses in Los Angeles and Orange Counties, including six in the Covina-West Covina community alone. Some, including Dr. Ward J. Jenssen, an experienced marketing consultant and one of the government's proposed expert witnesses in this case, have predicted this development of the discount house will result in the virtual demise of the supermarket such as those of Von's. While I do not agree with his conclusion, Dr. Jenssen has stated that the discount house within the next ten years will emerge as the dominant retail form in this area and the role of the conventional supermarket will shift to that of a convenience outlet for quick, fill-in purchases. He has further stated:

"If one has been studying the signs closely enough, however, it is evident that by 1970 or 1975 the supermarket as we know it today in Los Angeles will have been relegated to a second-class role, and local operators who continue to expand with conventional markets in conventional type locations are pouring money into the traditional 'rat hole.'" (From the Commercial Bulletin, October 6, 1961.)

It is my opinion that the discount houses will be a competitive factor and, of course, they are able to obtain Certified membership, but I do not foresee them relegating the

supermarket, whether chain or independent, to a minor role in food distribution.

A further development is the increasing importance of the conventional liquor store as a retailer of food products. Just as the supermarkets in more recent years have commenced the sale of alcoholic beverages at many of the supermarkets, so have the liquor stores commenced the sale of various food products. In many of the liquor stores in this area the customer is able to purchase milk, bread, and various canned goods. As a matter of fact, it is common knowledge in the industry, for example, that many of the liquor stores are better customers of the bakeries than many of the grocery stores. While I do not have figures to support my belief, it is my impression, based on my knowledge of the business, that many of the liquor stores of today sell more groceries and related products than most of the small "Mom & Pop" stores.

Drive-in milk depots run by dairy companies are now springing up all over the area. Not only are they permitted by the state law to sell their milk cheaper than the grocers but most of them carry other items, such as bread, wieners and potato chips. Drug stores compete with the grocers in the sale of health and beauty aid items and paper goods as well as alcoholic beverages, tobaccos and other items.

A further very recent development in this area and elsewhere is the emergence of the bantam store, which is truly a "convenient outlet" for quick, fill-in purchases. One example of this type development is Speedee Mart, Inc., a California food market chain which was organized in 1956. It builds and franchises very small convenience stores which can best be described as "a modern-day Mom & Pop operation." I am informed that Speedee Mart, Inc. has well over 100 such franchise stores in operation in various California cities and there are a large number of them in the Los Angeles area. I understand that Speedee Mart does the buying, pricing, advertising, accounting and supervising of all activities, but the particular stores are run by individual owner-operators under the franchise plan.

A new type of competition which is now being experimented with in Eastern States and, if successful, will no doubt move into this area, is illustrated by the plans of various of the major oil companies to build small grocery

stores in connection with their gasoline stations. Supermarket News for October 15, 1962 announced that Socony-Mobil Oil Company, Shell Oil Company, and other oil firms are considering moving into the retail food business by erecting bantam markets adjacent to their stations.

Obviously the retail food business in this area is a dynamic, challenging, highly competitive and ever-changing business. Anyone familiar with the business would have to agree, in my opinion, that it is highly competitive and highly decentralized and no chain or group of chains could ever dominate the market.

There is scarcely a household in this entire area that does not have at least three first-class supermarkets within ready shopping distance, and anywhere from 5 to 8 additional markets of smaller or older vintage. I do not foresee any change in this highly competitive condition.

Mergers by Other Companies

The government attorneys have furnished our attorneys with a proposed "Stipulation As To The Testimony of Dr. Willard F. Mueller, Chief Economist of the Federal Trade Commission," which has attached to it as Exhibit B a list taken from records of the Federal Trade Commission of the "Acquisitions Made By 9 of the 20 Largest Chains in the Los Angeles-Long Beach Metropolitan Area; By Company: 1948-1958." The government attorneys have contended that this exhibit shows "increasing concentration". I think it is worthy of note that not one of these acquisitions has been attacked by the Department of Justice or the Federal Trade Commission. I notice also that there is some double counting in this list, since, for example, it adds acquisitions both by and from Mayfair Markets in order to reach its 132-store total and it shows an acquisition by Thriftmart from its own wholly-owned real estate holding company. Similarly, it shows a six-store acquisition by Food Giant from Food Giant in 1957, when as a matter of fact there was no such acquisition. What Food Giant did was to merge with Magic Chef, a stove company, the stock of which was listed on the New York Stock Exchange, so that Food Giant could thus be so listed and get financing more easily. Food Giant sold the appliance business in 1958. I have the fol-

lowing further comments concerning the specific acquiring companies referred to:

Mayfair Markets

Mayfair is a multi-state chain which got its start in this area and now operates more than 175 stores in various Western States. The exhibit shows that in the period 1950 to 1958 Mayfair made five acquisitions totaling 18 stores, one of 9 U-Tel-Em Markets, 6 of Bob's Supermarkets, and 3 of single markets. The exhibit also shows that in this period Mayfair sold five stores to Fox Markets (the start of the Fox chain in 1954) and four to Yor-Way. Actually, as is shown by the affidavit of Clive Johnson, Mayfair sold more stores in this area than it acquired from others.

Lucky Stores

Lucky Stores is a multi-state chain which now operates some 140 stores in several Western States. The exhibit shows that it made one acquisition of nine stores in 1956. The exhibit does not show that this was Lucky's means of entering the business in this area. It had not theretofore done business in the Los Angeles metropolitan area. Since that time it has opened a number of new markets in this area.

Alpha Beta

The exhibit shows that Alpha Beta acquired the 13-store Raisin Markets chain in 1958. Raisin Markets was a family business and the father and founder has passed away shortly prior thereto. His son Phil successfully ran the business but his health shortly became very bad and, in fact, he has since passed away. The last two stores built by the Raisin chain were very large but very unprofitable, and there was concern that the losses on these stores might cripple the entire operation. Although the Raisin family was anxious to make the sale to a responsible purchaser they did keep, and the family is still running for itself, the liquor departments in these stores.

The exhibit does not show, but it is a fact, that in the period 1948 to 1958 Alpha Beta sold seven of its own stores

to individuals and that six of these are now being operated successfully by individual operators.

Thriftimart

I have noted that the exhibit lists as an acquisition the transfer of a new store to Thriftimart by its real estate operating company, Corbin Development Co. The exhibit also lists the acquisition by Thriftimart in 1949 of the 19-store Roberts Public Markets chain. The great majority of these markets were very small and with respect to a majority of them, Thriftimart turned them over to the former managers or employees on a cooperative arrangement whereby Thriftimart supplied the inventory on consignment but the business was owned and operated by the former employees. Thriftimart over the years has made similar arrangements with various of its managers of other Thriftimart stores and has thereby enabled experienced people to enter into and develop a business of their own.

Fox Markets

Edward Fox and John Cramer, former executives of Mayfair, started Fox Markets in 1954 by taking over five Mayfair Markets. The exhibit shows that from then until 1959 Fox Markets made 11 acquisitions totaling 32 stores. It is common knowledge in the industry that a large number of these stores were in poor locations; that Fox was under-capitalized and it was soon in financial difficulties because it could not pay its suppliers. Fox Markets is now in bankruptcy. A number of its stores have been sold by the trustee in bankruptcy and the remainder, I believe a total of 18, are being operated for the trustee by Food Fair, the sixth largest national chain. In addition to operating the Fox Markets, Food Fair has recently started business in this area by opening supermarkets in some discount houses.

McCoy's Markets

The exhibit shows that McCoy's acquired one store in 1955 and another store in 1957. I do not know the details but I do know that McCoy's was first organized in 1948 by

Joseph D. Saul, who had been employed in the grocery business in this area for many years before that and then decided to open up his own business. I believe there are now fourteen or fifteen McCoy's stores in this area, which is another illustration of the opportunities for growth and success for the experienced and able operator.

McDaniel's Markets

The exhibit also shows three acquisitions by McDaniel's in 1957-58 of a total of six stores. This is another instance of the chain which expanded too rapidly with insufficient capitalization. At one point in 1960 it reached a total of 24 stores and announced plans for building six more stores in that year. Unfortunately, when Fox Markets got into trouble, creditors of other concerns, including McDaniel's, started pressing for prompt payment. Because it was greatly overextended, McDaniel's sold off a number of its best markets to various individuals and smaller chains in late 1960 and early 1961, but it could not salvage the situation and in October 1961 it was declared bankrupt. Food Giant took over the remaining nine McDaniel's markets at this time. These were by no means the best McDaniel's markets but with the markets Food Giant obtained some experienced and very able executive personnel, which is in short supply in this area.

Yor-Way Markets

The exhibit shows, and it is a fact, that Yor-Way got its start by purchasing three markets from Mayfair in 1953. Thereafter it made seven acquisitions of single stores and one acquisition of a chain of five stores. This is another case of a chain which purchased a number of marginal markets, which never had enough money and which, according to the trade papers and their attorney James McLaughlin, always operated on deficit financing. Nevertheless, it was able to keep going until the death of its founder, Jack Kennedy, in 1960 and the Fox Markets bankruptcy. When the creditors began to press it in 1961, Yor-Way went into bankruptcy. A few of its poor stores were closed and the balance were sold to various individuals.

This completes my discussion of the list of the acquiring

companies set forth by the economist of the Federal Trade Commission. As will be seen, the bare statistics do not fully or, for that matter, entirely accurately give the true picture. There have been acquisitions by these companies, none has been challenged as illegal, and some were not financially sound organizations. In my opinion these mergers have not tended to create a monopoly in this area nor, based on my experience, do I think there is the slightest possibility that there will ever be only a few large concerns doing business in this area. I have no doubt there will continue to be, as there are now, a number of larger chains, hundreds of small chains, and several thousand independents.

Reasons for the Merger With Shopping Bag

At the time of the merger with Shopping Bag, 80% of the outstanding stock of Von's was held by members of the Von der Ahe family. In the event of my death or the death of my brother Wil, this would have created severe estate tax problems for our family and would have required the forced sale of a substantial part of the stock of the estate to pay death taxes. There was not an active over-the-counter market for our stock at that time and a forced sale of a large block for estate tax purposes would naturally have had a very adverse effect on the market value of the stock. At the time of the merger Von's had approximately 3280 public stockholders and Shopping Bag had approximately 2064 public stockholders. Thus the merger resulted in 5344 stockholders for the surviving corporation and in a much broader and more active over-the-counter market. Further, the increased number of stockholders other than members of the Von der Ahe family which resulted from the merger enabled Von's to comply with the New York Stock Exchange requirements in this connection and the stock of Von's was listed on the Exchange in 1961. This likewise resulted in a wider market for Von's stock.

The owners of Shopping Bag were faced with virtually the same problem—members of the Hayden family owned approximately 60% of the stock of that company. Moreover, W. R. Hayden, the President of Shopping Bag, desired to become a little less active after over 35 years of hard work. In addition he believed, and my own study of the Shopping Bag organization caused me to agree with him, that Shop-

ping Bag was suffering from a shortage of qualified executive personnel to carry on its business successfully. Actually, Shopping Bag's earnings had begun to sink. Shopping Bag was by no means a failing company, but it is equally true that in the several years prior to the merger while Shopping Bag sales increased, nevertheless its net profits were dropping. This was a matter of concern to Mr. Hayden. In these same years, Von's with ten fewer stores, had greater total sales each year than Shopping Bag, and increasing net profits. The total sales, the net profit and the percent of net profit to total sales of Shopping Bag in the years 1957, 1958 and 1959 were as follows:

Year	Total Sales	Net Income	% Net Income to Total Sales
1957.....	\$87,007,857	\$1,360,986	1.6%
1958.....	90,531,209	912,851	1.0%
1959.....	84,403,866	770,122	.9%

For these same years the total sales, the net income and the percent of net income to total sales for Von's was as follows:

Year	Total Sales	Net Income	% Net Income to Total Sales
1957.....	\$89,990,056	\$1,872,943	2.1%
1958.....	94,485,993	1,947,367	2.1%
1959.....	86,605,829	1,981,358	2.3%

(Sales for both companies were off in 1959, of course, because of the four week strike in January 1959.)

In these same years the respective ratio of net profit after taxes to total assets for the two companies was as follows:

Year	Shopping Bag	Von's
1957.....	6.6	12.7%
1958.....	3.9	12.4%
1959.....	3.2	10.8%

Von's in contrast to Shopping Bag, was strong in well-qualified executive personnel who could carry on the business.

Our survey of the Shopping Bag operation convinced us that it could be upgraded in many respects and made more profitable, and that we have done since the merger. The stores of Shopping Bag were for the most part operating in different communities than the Von's stores and this also made the merger attractive. In addition, the combined

operation made possible important savings in advertising costs and reduction of overhead expenses and made our warehousing and trucking operations more efficient. Further, I had known W. R. Hayden well for many years and I was convinced that he and I would make a good team. Experience has proved this to be so.

Apparently the government attorneys believe these savings and efficiencies somehow give Von's an unfair competitive advantage over smaller concerns operating in this area. This is not true. While we have made savings and will profit therefrom, competition for the patronage of the retail customer is still in the local area served by an individual store, and, as I have stated, no chain store has any advantage over any other chain store or independent operator in that competition. Nor, in my judgment, did the merger lessen competition in any respect in this area nor give Von's any power or control over competition in the area. I have mentioned that four of the nation's largest chains, A & P, Safeway, American Stores (Acme), and Food Fair, and two strong multi-state chains, Lucky and Mayfair, do business in this area, and I have mentioned the strength of the remaining chains and single store operators who are affiliated with the cooperatives. Certainly the merger has not discouraged these competitors from building new stores or others from entering the business or expanding.

In entering into this merger we had sound business and personal reasons, but absolutely no intent and no ability to lessen competition. Being realists and knowing the industry from having lived with it for 35 or more years, we could never have logically entertained any thought that we could control or lessen competition, nor have we. The fact is that this merger kept two local businesses of local origin in control of local people.

This brings me to a problem which puzzles me about this case: Mr. Hayden, who owned or controlled approximately 80% of the stock of Shopping Bag, desired to become less active, and he was concerned about what would happen to his company if he did. He wanted to make a deal which would give security to him and his family for the equity they had created. This equity would have been dissipated if, as he was concerned, Shopping Bag continued to go downhill. He had confidence in Von's and could get a fair price

for his equity from us. Would it have been better for him to sell out to some large national concern, such as Kroger or A & P, or, alternatively, to turn the management of his company over to others when he believed this would not be in its or his best interest? And, if this merger should somehow be held to be illegal, must Mr. Hayden resume an active management he does not want, or liquidate his assets, or sell to some large national concern which would give fair value for the assets? Those of us who have spent our lives in the industry have seen many failures occur when management becomes tired, weaker, or less aggressive, or when a company becomes overextended from a credit standpoint. Yor-Way promptly went downhill and its stores were sold off by the creditors' committee following the death of its founder, Jack Kennedy. Greater All American suffered two bad years, in the red, and was forced to sell off some of its stores following the death of its founder, Blayne Hutchison. Fox Markets started out in 1954 by purchasing a number of stores from Mayfair and others and they then expanded too rapidly with insufficient assets and with a hastily put together staff. Fox is now in bankruptcy, a number of its stores have been sold off, and the remainder are being operated by Food Fair, the sixth largest national chain, which wishes to take over the Fox Markets in order to enter this market area. Over the years there have been, and I am sure in future years there will be, a number of such failures of chains, both big and small. In my opinion Shopping Bag would have experienced similar difficulty if Mr. Hayden had passed away, and I do not believe this would have been of any benefit to competition or to the industry, and it would have been disastrous to the Hayden family who had worked so hard and sacrificed so much to create their organization. The merger has given them security and, in my opinion, it has not had and could not have an anti-competitive effect.

This is the point which I believe important: There were perfectly honest and legitimate business and estate tax reasons which brought about this merger, which had nothing to do with aggrandizement or any desire to injure competition. No one connected with the transaction thought it would or could stifle competition and anyone familiar with the business would, I am certain, agree with us that it could not stifle competition.

Comments on the Government Affidavits

I have read the first twenty affidavits which the government attorneys have supplied. Each of the affidavits appears to be a carbon copy of the others except for the first paragraph which gives the name and location of the affiant's market and the gross business. I think it is worth noting that not one of them points out a single way in which the merger of Von's and Shopping Bag has injured the particular affiant or lessened competition in any way.

Each makes the point that it is difficult for the single store operator to get into the more desirable shopping centers, and this is true, as I have pointed out. But breaking up the merger of Von's and Shopping Bag would not help them at all in this or any other respect. Each also states that the larger chains have an advantage over the independent and small chain "in terms of inventory control." This is utter nonsense insofar as the individual operator or small chain is concerned. The single store operator or chain which is a member of Certified has the advantage of Certified's electronic data processing system which helps eliminate out-of-stock conditions in stores of its members. Moreover, if an individual operator does not have complete and superior control of his inventory at all times, which is something no chain can really achieve, then he certainly belongs in some other business. Each states that he is at some disadvantage in the purchase of fresh dairy, meat and produce items. I do not agree. Any able and knowledgeable single store or small chain operator actually can do every bit as well as the larger chains in purchasing meat and produce. I know this is a fact, and the testimony of various operators such as Cecil Dobson, Joseph Goldberg, Ted Woods and Joseph Goodnight confirms it. If the government witnesses are not doing as well as others in this respect they have only themselves to blame. How membership in Jerseymaid Milk Products Company gives Von's a competitive advantage none of the witnesses says. This has been a profitable investment but since the price at which milk is purchased and sold is fixed by state law there is no competitive advantage here any more than there would be if the investment were in real estate or the stock market. If there is any competitive advantage in

milk it would lie with the users of the nationally advertised brands like Arden, Carnation and Foremost.

I note that each government witness states "that he faces very vigorous competition from Von's" and I hope and believe this is so. Note, however, that not one states that he is unable to compete successfully with Von's and none states the merger had any adverse effect on competition.

Each of the government witnesses also states that if our merger is permitted "there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area." I have difficulty believing that any person familiar at all with this industry could or would so testify. The structure of this industry is such that it is not even conceivable that a few large chains will ever dominate the retail grocery business in this area. The very existence of Certified Grocers and Orange Empire precludes any such possibility. I doubt that these government witnesses have any better knowledge of this industry than my family and Mr. Hayden and none of us can foresee subsequent mergers "between and involving the other major chains". Von's and Shopping Bag were unique in that they had virtually no overlapping stores, and I cannot think of any two other "major chains" which could sensibly merge, and I know of none with any plan to do so. The merger of Von's and Shopping Bag took place almost three years ago and I do not think any witness could honestly state that competition has been lessened at all, much less substantially, and how anyone can foresee a tendency to monopoly in an area such as this where there are literally thousands of separate grocery concerns, and new companies such as those of Ted Woods, Joe Goodnight and others constantly entering the market, is more than I can understand.

I have personally visited the stores of various of the

government witnesses. Some are obviously very small and old stores which do very little business. Some are clean with an attractive display of merchandise. Some are clearly not well-run operations and the owners could benefit enormously from copying the merchandising and display techniques of the many top-notch single store operators like Cecil Dobson, Mrs. Roberts, Joseph Goldberg, Rudy Dahl, Harlos Gross, or any of hundreds of other single store operations in this area. The public in general does not want to patronize a store where the merchandise is not top-notch or is poorly displayed, or the atmosphere is not pleasant.

I believe it is interesting that various of the government witnesses have been able to enter the business in recent years and to survive and others have been able to expand. As will be seen, most of them were able to enter the business after getting their experience with a chain. It is also worth noting that various of the other affiants have operated their stores for from 18 to 26 years, apparently successfully. For example, I know that the store of Manuel Gertmenian at 1720 East Colorado until 1947 was the headquarters store of Market Basket. Mr. Gertmenian took over the lease when Market Basket gave up the store and he apparently has done well there because in May of 1960, two months after the merger of Von's and Shopping Bag, he was able to and willing to take the lease on a second store then known as the Commonwealth Market at 301 South Atlantic Boulevard in Alhambra, and I am certain that this is a successful operation for him. This store is not a large one and it is quite old; also it is located directly across the street from a large and modern Safeway store. Apparently Mr. Gertmenian concluded he can compete successfully with Safeway, and he has. It is apparent also that the merger of Von's and Shopping Bag did not discourage Mr. Gertmenian from expanding.

The Temple City store which Mr. Roderick A. Irvine, one of the government witnesses, had for a short time and which he states "did not show a profit and he closed it in May 1961" was not in fact closed. Actually it was sold by Mr. Irvine to two relatively young but experienced and very able and aggressive persons. This is their first store, but I predict that they will have others in the future. They

cleaned up the store, put in better fixtures, and they have a first-class operation. I am certain that these young and able men are making and will continue to make a successful operation out of this store, which is located just two or three blocks from Von's headquarters and warehouse. From personal observation, I would say that Mr. Irvine sold the very best of his three stores.

I do not want to quarrel with the government witnesses. There are bound to be differences of opinion in an industry as diverse and competitive as the retail grocery business in this area. It is only human nature for some chain operators to envy the individual operator and for some individual or small chains to envy the larger chain. I am certain that each has certain advantages, but I am equally certain that there is no danger of the able and knowledgeable independent disappearing, and absolutely no possibility that any chain or group of chains could gain control of this market. Competition is necessarily on a store-by-store basis and the draw area of any particular store is a limited one. The single store operator who knows the business can draw the customer and keep the customer just as well as any chain if, as each is able to do, he sells at fair prices, runs a clean and attractive store, and sells service and personality along with his merchandise.

Theodore A. Von der Ahe

Subscribed and sworn to before me this 26th day of February, 1963.

Doris W. Paschal, Notary Public in and for said County and State, [Seal.]

My Commission Expires May 10, 1965.

EXHIBIT A

Table B

Analysis of the Gross Sales of Grocery Stores with Estimated Annual Sales of Less than \$500,000 that Opened in 1960 and Closed by November 15, 1961, in the Los Angeles Metropolitan Area

Frequency distribution of Annual Sales under \$500,000

Annual Sales	Twenty largest chains	Remaining chains	Independent outlets	All outlets
Under \$50,000.....	—	2	27	29
\$ 50,000 to \$ 99,999....	—	2	10	12
100,000 to 149,999....	—	2	11	13
150,000 to 199,999....	—	1	11	12
200,000 to 249,999....	—	1	1	2
250,000 to 299,999....	—	—	—	—
300,000 to 349,999....	—	2	1	3
350,000 to 399,999....	—	1	—	1
400,000 to 449,999....	—	—	1	1
450,000 to 499,999....	—	—	—	—
Totals.....	—	11	52	63

4-6-62

[fols. 1-2]

DEFENDANT'S EXHIBIT BA

IN THE UNITED STATES DISTRICT COURT

No. 336-60-CC

[Title Omitted]

Deposition of THEODORE A. VON DER AHE, taken on behalf of the Plaintiff, at Room 806, Federal Building, Los Angeles, California, commencing at 2:00 P.M., Thursday, May 23, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to oral stipulation.

[fol. 3] THEODORE A. VON DER AHE, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Coyle:

Q. Mr. Von der Ahe, would you state your full name and address for the record, please.

A. Theodore A. Von der Ahe. My residence is 5220 West 2nd Street, Los Angeles, California.

Q. You have your affidavit with you?

A. Yes.

(Discussion off the record.)

Mr. Coyle: Q. Mr. Von der Ahe, if you would turn to Page 7 of your affidavit, referring you to the sentence beginning on Line 5, "By comparing these figures, it is apparent that the grocery business in Los Angeles is conducted by 3,968 separate concerns operating more than 4,700 stores. I am not an economist but I am amazed that the government economist would call this a 'concentrated' industry in this area." Would you say that it is a fragmented industry rather than a concentrated industry?

A. You are referring to the study which was prepared by Godfrey Lebhar in Business Guides.

Q. I am referring to this language on Line 5 there before [fol. 4] you get to Lebhar.

A. You are talking about my comments on the figures which his study produced.

Q. I believe those are the figures which you computed yourself on both the Board of Equalization and Mr. Godfrey Lebhar's study.

Mr. Alsup: Would you clarify, Mr. Coyle, what you mean by "fragmented industry"?

Mr. Coyle: I wonder if the witness understood my question.

The Witness: I understood the language but I would like to have you clarify and define the word "fragmented" for me.

Mr. Coyle: Q. Would you say that this is an industry made up of many separate entities?

A. Yes, definitely so.

Q. And if that is what fragmented means, this is a fragmented industry?

A. I agree.

Mr. Alsup: You are referring to the Los Angeles metropolitan area, are you not, Mr. Coyle?

Mr. Coyle: I am referring to the industry which he is referring to. I presume it is the Los Angeles metropolitan area.

Q. Now referring to Page 8 of your affidavit, you refer to the competition which the Von's Stores face in their [fol. 5] immediate trading area. Are you familiar with the Von's store in the Whittier area?

A. We have three Von's stores in the Whittier area at the present time. Which one do you mean?

Q. You had an original Von's store to begin with there, didn't you?

A. Yes.

Q. Does that Von's store face much competition?

A. Yes, very much.

Q. The former Shopping Bag Stores in the area, do they face very much competition?

A. Very much.

Mr. Alsup: Just a moment, in order to clarify it. You say the former Shopping Bag Stores in the area.

Mr. Coyle: Yes.

Mr. Alsup: One of those former Shopping Bag Stores, Mr. Coyle, does not exist.

Isn't that correct, Mr. Von der Ahe?

The Witness: You are referring to the one in the Whittier Quad. That is no longer operated as a Shopping Bag store.

Mr. Coyle: Q. What happened to that store?

A. That store was vacated and a new facility operating under the name Von's was built in the same shopping center. In other words, we felt that this store did not compete with the Von's store several miles to the east, and it being [fol. 6] an entirely different shopping area we built a new store there to take care of that trade.

Q. And all three of those stores in the Whittier area face competition, do they not?

A. Yes.

Q. Do they face substantial competition?

A. They face substantial competition from both independents and chain stores.

Q. They have a number of competitors?

A. Yes.

Q. And have they had a number of competitors for several years?

A. They have had a number for several years and more are continuing to move into the area.

Q. And they have had a number of competitors five years ago?

A. Five years ago I don't know what stores were open at that time so I don't want to make a guess. But that area, as a general rule, has been growing and as the population comes in new stores are coming in.

Q. How many customers would those stores out there in Whittier each of them have to have in order to handle in the course of a week to keep the volume up?

A. Mr. Coyle, I do not have those kind of statistics at my command. I don't know how many customers a store has to have. That depends on the area, the trading area.

[fol. 7] Q. I am referring to this particular trading area out there.

A. As I say, I don't have those kind of figures at hand. I can't tell you whether it would be 10,000 customers or 11,000 or 8500. I don't know.

Q. Would it be as many as 8500?

A. Those figures are available to me and I can develop them for you. But I don't want to be held to a number because I don't know it at this time.

Q. Could you give us a minimum estimate of at least how many you would have to have?

Mr. Alsup: You mean "have to have," Mr. Coyle, or do you want the figure of what was the customer count in '59 and what is it today?

Mr. Coyle: Q. What would the count in '59 have been, a minimum customer count for your stores?

A. This I don't know.

Q. Not even in general terms?

A. I don't have those figures in my memory.

Q. You don't know whether it would be over 3,000 or over 6,000?

Mr. Alsup: A week or a month are you talking about?

Mr. Coyle: A week.

The Witness: I would say that it would be over 3,000, it would be over 6,000. Because those would be minimum figures. But now don't ask me how much over because that [fol. 8] is the information I do not have at this time.

Mr. Coyle: Q. Referring on the same page to your comments beginning on Line 20, do you have any knowledge, based upon your own observations of the industry whether or not there are fewer or more grocery stores operating in the Los Angeles metropolitan area today than there were in 1940?

Mr. Vaughn: '40 did you say?

Mr. Coyle: '40.

The Witness: My observations, Mr. Coyle, are that this trend—that there are now more grocery stores, supermarkets, et cetera, as we know them today, operating than there were in 1940. Now, I might distinguish that by saying I

do not know if there are more grocery stores licensed to operate than there were in 1940. But the general trend of the business has been larger stores and there are more of them.

Mr. Coyle: Q. There are more large stores but are there more stores on a numerical basis?

A. This I don't know. At one time I testified there were. I have not taken the time and trouble to find out whether there are, numerically speaking. But there are more stores in the grocery business represented as such than there were in 1940.

Q. And in 1940 were there more stores?

A. I would say so.

Q. Do you think on a year-to-year basis there are more grocery stores on a numerical basis?

[fol. 9] A. From the very fact that Certified has more customers, Spartan has more customers, Orange Empire is doing more business. All of the independents—not all of the independents but all of the chain stores here have more units. There are more independents in the business as such. My observation, without being founded in statistics, is that there are more stores.

Q. But you have never made a count?

A. I have never made a count.

Q. And you know that Safeway has more stores now than it did in 1940 in the area?

A. I believe they do.

Q. In this area?

A. I believe they do.

Mr. Alsup: Than in 1940; is that the question?

Mr. Coyle: Yes.

The Witness: Yes.

Mr. Coyle: Q. And in 1940 they had more stores in the area?

A. That would be my considered opinion.

Q. And they have more stores than they had in 1950?

A. I would say so.

Q. And 1955?

A. Is the same, yes. Now, this is a guess, please under-

stand it, because I have not kept track of the number of Safeway stores. It is just my opinion.

[fol. 10] Q. And it is a guess with respect to the total number of stores in the area?

A. That's right.

Q. And based upon your guess you conclude that the Board of Equalization figures are inaccurate?

A. I didn't say that, no, sir.

Q. You question the accuracy of the statistics obtained by the government attorneys from the California Board of Equalization, which would indicate that there are fewer grocery stores now than there were in 1948.

A. And I further went on to state the reasons the accuracy of the Board of Equalization statistics were questioned, and I set those forth on Page 10.

Q. You state that as a result of a vast freeway system, either by condemnation of the store itself or the destruction of the homes which it served, some stores have been closed in particular cities—in portions of the cities. Are the operators of those stores generally able to get into shopping centers when those stores are closed?

A. I have no information on that. I don't know.

Q. If they are small operators from your experience would they be able to get into a shopping center to open a store?

A. I see no connection between his store being closed up because of a freeway being put through a neighborhood and a small operator being able to open up a store in a shopping center.

[fol. 11] Q. Where would a small operator be able to open up a store if his store were closed as a result of a freeway or a condemnation?

A. I think it would depend upon the ability of the operator whether he was acceptable to the developer of a shopping center. The same as it would have been before the store was closed on account of the freeway. And if the small operator was not in a position to open in a large shopping center before he lost his store I see no reason why he should automatically become qualified to open a store in a shopping center after he lost his store. I think he would have to find a comparable store as he had been previously operating.

Q. Is it your opinion that personality, services and courtesy go a long way toward attracting customers?

A. Yes.

Q. And if a storekeeper because of his personality, service, courtesy and friendliness builds up acceptance with certain customers will they pass other stores and travel a longer distance than they otherwise might in order to stop at his store?

A. I think we are discussing something that is a matter of degree. Everything else taken into consideration and being equal, the stores that do have the friendliness, which is another way of putting what you just asked me, will have a better chance to succeed than a store that does not offer [fol. 12] the same advantages.

Q. Are all other things ever completely equal between two stores for a given customer? One would necessarily have to be closer to her than the other, wouldn't it?

A. I have to go along and I would say that to any customer all things are never equal. But when you consider the things that make a person go to one store and discriminate against another store, you will find that things like service and personality, friendliness, convenience and other things that a woman takes into consideration when she patronizes a particular store.

Q. And price?

A. Price by many, many surveys is way down the list of reasons why people trade in stores.

Q. How about images, is that important?

A. Image is just another word for what we are talking about. The store personality or a store image is the same thing.

Q. Which is more important, the friendliness, courtesy, personality and services or the convenience of the store?

A. In my opinion the most important thing a market can have is convenience. That means convenience to the prospective customer.

If a customer can drive to the market easily with a freedom of ingress and exit so that she doesn't have difficult left-hand turns to make and things of that nature, the [fol. 13] woman will come to your store once. After she finds it convenient to come to your store you must then develop this image or personality which is friendliness,

courtesy, cheerfulness and the other things that a customer expects when she goes shopping.

Q. By "convenience," you mean the traffic access and the parking facilities?

A. That is what I mean.

Q. And the driving time?

A. Yes.

Q. Driving time too?

A. Not necessarily driving time, because a woman might find it more convenient to drive two miles on an open road without any stop signals or railroad tracks or things to cross as against driving one mile through a town of heavily congested traffic. So I wouldn't add driving time to this at all.

Q. Only as it might relate to the traffic congestion?

A. That's right.

Q. And the distance is really not so important as the access on the road—

Mr. Alsup: What distance are you talking about, Mr. Coyle?

Mr. Coyle: I am just asking him. He just said that a woman would rather drive two miles on a non-congested highway than one mile on a highway with many stoplights.

The Witness: As long as we are talking about minimal [fol. 14] distances I would say that it doesn't make too much of a difference when we are talking about convenience. When we are talking about more than a mile or two then distance definitely has to be taken into consideration because you are talking about time then.

Mr. Coyle: Q. Then you are talking about driving time.

A. Yes.

Q. What driving time would get to be beyond that minimal driving time that you refer to?

A. This is very difficult to estimate because driving time in a country would be considerably different than driving time in the city. And it becomes a matter of what people are accustomed to. Whenever driving time becomes more than a few minutes it is something I am sure that women take into consideration when they go shopping, and particularly if they have to drive by other competing stores

they stop in first. The matter of convenience overcomes the driving time and you don't get your customer anyway.

Q. You refer on Page 22 to a sign which you have seen on several occasions, you say, in the window of a very small store at Beverly and Normandie in Los Angeles. Have you seen that sign recently?

A. No, I have not.

Q. Is that the store operated by Mr. Fleishman, do you know?

A. Well, this is a store that is at the northwest corner [fol. 15] of Normandie and Beverly Boulevard. I don't know who operates the store.

Mr. Alsup: I will stipulate that it is Mr. Fleishman's store, Mr. Coyle.

The Witness: I go by the store almost every day so I have noticed the sign on many occasions.

Mr. Coyle: Q. Did you notice when it came down?

A. No.

Q. You mentioned on Page 26 that there are at least 25 discount houses in Los Angeles and Orange Counties which include a large supermarket under their roof. How many of these supermarkets are operated by the Lucky Stores?

A. Well, if you will permit me to refer to the Commercial Bulletin of March 29, 1963, they show a list of all the discount centers with food departments in this general area. And I believe the Lucky Stores operate the Gemco Department Stores, and they list two of these locations.

Q. You made no independent study to check whether this article is correct or not, have you?

A. I have no reason to doubt the accuracy of these. However, I did not go out and independently check all of these.

Q. Has Von's ever considered going into the discount store phase of the grocery operation?

A. No.

Q. Have they ever been approached with an offer to go [fol. 16] into the discount store phase of the operation?

A. We have, to my knowledge, received one offer to buy out a complete discounting operation, including the food department store, which we rejected without very much study, and we received one other offer to operate a food department in a discount store which we turned down.

Those are the only two that readily come to my mind. I think of nothing else.

Q. Would you be desirous of doing this?

A. No. We have no intention of entering the discount field.

Q. Is Mr. W. A. Christensen general manager of your organization?

A. Yes. He recently joined our company. He hasn't been with us two years yet.

Q. Was he with you in January of 1962?

A. Yes. Only a few months at that time. I believe he came with us in October of 1961.

Q. Were you present at a meeting of the Sales Managers Club in January of 1962 when Mr. Christensen made an address and discussed this subject of discount houses?

A. I don't remember if I was or not.

Q. This was at the Nikabob.

A. I have been there at quite a few Sales Managers luncheons and I don't remember if I was at this one particular luncheon.

[fol. 17] Q. Do you ever remember or have you heard that he made a talk or a speech at a meeting of the Sales Managers Club at the Nikabob?

A. It is very possible he did. I just don't happen to remember it or recall it.

Q. Do you ever recall him making a talk in connection with the discount houses?

A. No.

Q. You don't ever remember him expressing the opinion that in 1961 the Von's-Shopping Bag sales suffered no loss due to discount houses?

A. I have to say that I am completely ignorant or do not remember anything that he said. I don't know if I was there. I can verify if I was there. But things that are picked up by reporters——

Q. I will show you this and this might refresh your memory. It lists you as being present.

A. Does it say I was there? Well, as I said, it is very possible that I was there.

Q. If he said that——

Mr. Alsop: Why don't you read it, Mr. Von der Ahe, and then I would like to read it, since it has been shown to the witness.

Mr. Coyle: Q. Did this refresh your recollection, Mr. Von der Ahe?

A. It is still very foggy, but because that says I was there I will admit I was there.

[fol. 18] Q. Did you hear that speech?

A. Let me say this. Christensen talked without notes—

Q. But did you hear him? My question was: Did you hear him?

A. This was so long ago that I will say that I was there when he gave the speech, but if you ask me what he talked about I don't know. This has been picked up by a reporter and this is the reporter's ideas of what Christensen said.

Q. Do you read the Commercial Bulletin?

A. Occasionally.

Q. But not regularly?

A. Not regularly.

Q. Does anybody in your organization read the Commercial Bulletin regularly for purposes of ascertaining what your employees are saying, or keeping in touch with public references made by your employees?

A. We have nobody assigned to that job, no. We get a half dozen copies of the Commercial Bulletin in the office and it is circulated around.

Q. Did your organization take any measures to counter or clarify anything said by Christensen at that meeting?

A. No, I am sure we didn't.

Q. Did you have any reason to think that anything that he said at that meeting, as reported in this Commercial [fol. 18-a] Bulletin, was incorrect or inaccurate?

A. Well, specifically you are referring to what now?

Q. Do you have any reason to think that Mr. Christensen was mistaken or inaccurate or misquoted when he made the following statement: "Christensen, expressing it as his personal opinion, said that Von's-Shopping Bag sales in 1961 suffered no loss due to discount houses"?

Mr. Alsup: Mr. Coyle, if you will refer to Page 27 of the affidavit you will see that the witness himself said that in effect.

Mr. Coyle: I didn't see it in the affidavit.

Mr. Alsup: He refers to Mr. Jenssen's statement and states his opinion as to the effect of it.

Mr. Coyle: Q. Is it your opinion that you have suffered no loss due to discount houses?

A. I would say that is an accurate statement, yes. That we have recognized them as competition but we have also remained as competitive as we could with the result that we have not lost any business to them.

Q. Now referring to Page 28 of your affidavit——

Mr. Alsup: Do you intend to mark the document as an exhibit?

Mr. Coyle: Not particularly, I don't think. I just showed it to him to refresh his recollection.

Q. You stated on Page 28: "I am informed that Speedee Mart, Inc. has well over 100 such franchise stores in operation in various California cities and there are a large number of them in the Los Angeles area. I understand that Speedee Mart does the buying, pricing, advertising, accounting and supervising of all activities, but the particular stores are run by individual owner-operators under the franchise plan." Who informed you of this?

A. This is my belief. And if you ask me who informed me of it, right now I don't think I could tell you. This is information that I pick up at the office.

Q. But you don't know who told you?

A. This minute I am not in a position to assign a name to who gave me the information. It comes out of a general discussion.

Q. And it may or may not be true. You have taken no steps to ascertain whether it is true?

A. That's right. But I think the facts speak for themselves that it is true.

Q. Which facts are those?

A. As stated here.

Q. Which facts? Do you know that Speedee Mart does the pricing for these individual owner-operators?

A. That there is well over a hundred of them operating in the State and that they do operate them on a franchise basis.

Q. And that Speedee Mart sets their prices?

A. Provides these services, yes.

Q. And one of the services is setting their prices?
[fol. 20] A. Yes.

Q. What do you base that conclusion on that Speedee Mart sets their prices?

Mr. Bates: Mr. Coyle, could you raise your voice, please? I can just barely hear you.

The Witness: On the discussions, as I say, that we have in our meetings at the office when we talk about things of this nature. This is the information I pick up. Plus the fact that they do publish their financial statements in the paper, which is a matter of common knowledge.

Mr. Knight: Off the record.

(Discussion off the record.)

Mr. Coyle: Q. I note, Mr. Von der Ahe, on Page 26 and Page 27 you quote from an article appearing in the October 6, 1961 Commercial Bulletin. Did you read this article yourself, or did someone show it to you?

A. I have read that article myself, if you are referring to the one by Dr. Ward Jenssen. Yes.

Q. Did someone call your attention to it prior to the time you read it?

A. No.

Q. That was one of the days that you read the Commercial Bulletin?

A. Yes.

Q. But you didn't read it on January 12, 1962 when the reporter—

[fol. 21] A. When he made this remark it received an awful lot of publicity and appeared in more than the Commercial Bulletin. It appeared several places, and obviously I saw it.

Q. Mr. Christensen's remarks at the Food Industry Sales Managers Club didn't receive publicity?

Mr. Alsop: I object to the question on the ground that it is argumentative.

Mr. Coyle: Q. Or did it?

A. It is obvious because you have shown me a copy of it. It did receive publicity.

Q. But you didn't read this article about Mr. Christensen and yourself?

A. I am not saying I didn't read it. I am saying I just don't remember it. Bear in mind, please, that every week

there is an article of some kind concerning our operation in some trade publication. A man would have to be a librarian to keep up with everything that has been published about our company.

Q. How long have there been drive-in milk depots in this area?

A. A guess would be about ten years. I cannot tell you exactly the length of time but my best guess would be around ten years.

Q. How long have liquor stores been selling food in this area?

A. I would say liquor was first authorized in 1935 and [fol. 22] I would say it has been since 1935.

Q. Do you know of any major oil companies who have built any small grocery stores in this area that are adjacent to their service stations?

A. There are none in this area at the present time. However, they are experimenting back East.

Q. Where back East?

A. And I am sure that if the idea catches hold that they will expand it out here.

Q. In which cities are they experimenting?

A. I do know of some snack shops that Standard Oil tried one time out here in connection with their stations.

Q. They didn't work, though, did they?

A. And I have seen stations now vending things like soda pop in the cases, they vend cigarettes and ice cubes and a few other things of that nature, which is getting into the food field.

Q. Does Standard Oil still have snack shops?

A. I think they have discontinued them.

Q. That didn't work, did it?

A. I don't know, but I think they have discontinued them.

Q. What cities back East are these oil companies experimenting with these snack shops?

A. I think I am quoting from an article— What page is it, please?

[fol. 23] Q. Page 28, the middle of the paragraph.

A. That is a quotation from Supermarket News for October 15, 1962. And they announce that Socony-Mobil Oil and Shell, and other firms, are considering moving into the

retail food business by erecting bantam markets adjacent to their stations.

Q. But you don't know that they have experimented any place?

A. I am relying on the veracity and the factual correct reporting of Supermarket News. But it shows a trend, an indication of what can happen.

Q. Can happen. But it doesn't show that it has happened any place, does it? They are considering, it says.

A. That is what it says.

Q. But they are not experimenting.

Mr. Alsup: You mean at the present time they are not, Mr. Coyle?

Mr. Coyle: Yes.

Mr. Alsup: Are you so testifying?

Mr. Coyle: I am asking Mr. Von der Ahe if they are experimenting at the present time.

The Witness: It is my belief that they are.

Mr. Coyle: Q. But you don't know?

A. I don't know.

Q. You would have to rely on Supermarket News?

A. Right.

[fol. 24] Q. And all Supermarket News said was that they were considering.

A. Right.

Q. It didn't say they were experimenting.

Now, on Page 29 of your affidavit, on Lines 22 and 23, you mention an acquisition by Thriftmart from its wholly-owned real estate holding company. What is that wholly-owned real estate company?

A. I believe it was the Corbin Realty Company. The name they took after Corbin Street out in Reseda where they built a store.

Q. And the Corbin Street Realty Company built the store and then Thriftmart acquired it from the Corbin Realty?

A. That is my understanding.

Q. And you know that the Corbin Realty Company is owned by Thriftmart?

A. Yes.

Q. And this was only one instance that you found in this study where that happened, wasn't it?

Mr. Alsup: I object to the question on the ground that it is confusing and ambiguous. You mean one instance where Thriftmart acquired a store from its own wholly-owned subsidiary?

Mr. Coyle: Yes.

The Witness: That was the only store they had.

Mr. Coyle: Q. The only store they acquired?

[fol. 25] A. Yes.

Q. Do you remember in March of 1960 telling the stockholders that all the advantages of the company's—that is March of 1961—that is telling the company stockholders that all the advantages of the company's merger with Shopping Bag Food Stores have not been realized? The combining of warehouse distribution and manufacturing facilities will not be completed until about August? Do you ever remember telling them that?

A. Yes.

Q. Has the combining of warehouse distribution and manufacturing facilities been completed now?

A. Yes.

Q. Are you now realizing the full advantages of the acquisition?

A. I think we are.

Mr. Alsup: Mr. Coyle, may I see the article to which you referred?

Mr. Coyle: I don't see why. I was just questioning him.

Mr. Alsup: If you object to showing it to me I am not going to quarrel with you. Do you object to showing it to the witness?

Mr. Coyle: I was just asking him a question.

Q. I am reading again, Mr. Von der Ahe, from the article in the January 12, 1962 Commercial Bulletin in which Mr. [fol. 26] Christensen is quoted as follows with reference to discount houses: "Their scope is limited unless they can develop a better merchandising plan in their food sections. They can't compete with good supermarkets. There is little or no grocery advertising, variety is limited and the customer has to walk to the rear of the store to buy the food."

Mr. Alsup: Since counsel has read from and quoted from the article in question I ask that it be marked as an exhibit for identification in connection with this deposition.

(The document referred to was marked by the notary public as Von der Ahe Exhibit No. 1 for Identification and is attached hereto.)

Mr. Coyle: Q. Does this statement by Mr. Christensen, as quoted in this article in the Commercial Bulletin, conform to your own understanding of the situation as of January 1962?

Mr. Alsup: Do you wish to look at the article?

The Witness: Yes.

First I would like to point out that these are the personal remarks of Mr. Christensen and you are asking me to—

Mr. Coyle: Q. I am just asking you a simple question. Do they or do they not conform to your own understanding?

A. —state whether they are my opinion also.

Q. Just "Yes" or "No." Do they conform or do they not?

A. I cannot answer it "Yes" or "No," because in some [fol. 27] degrees I agree with this and in other aspects I disagree. Because he goes on to state, "Their scope is limited unless they can develop a better merchandising plan in their food sections."

Q. Is that true?

A. A discount house has a far greater draw than a conventional supermarket. They draw from a far greater radius.

Q. Is that what he was referring to—

Mr. Alsup: I don't think the witness has finished his answer, Mr. Coyle.

The Witness: He says, "They can't compete with good supermarkets." I believe that is true if a supermarket remains alert and diligent and aggressively merchandises its store.

"There is little or no grocery advertising, variety is limited and the customer has to walk to the rear of the store to buy the food." I also agree with that, because the method of operating the so-called discounters is to use food as a

loss leader to attract trade. And by so doing they expose their food customers to all of the other merchandise that is on display in the store. So they do make them walk to the back of the store and they limit their selection and they do not provide all the services and facilities a conventional supermarket does provide.

So with those qualifications that would be my answer.

[fol. 28] Mr. Coyle: I have no more questions, Mr. Von der Ahe.

Cross-examination.

By Mr. Alsup:

Q. Mr. Von der Ahe, Mr. Coyle referred you to Pages 26 and 27 of your affidavit in which you refer to the government's witness Dr. Ward Jenssen.

Mr. Coyle: You are assuming a fact not in the record.

Mr. Alsup: We have been furnished with a statement by Mr. Coyle as to what Dr. Jenssen would testify to and an exhibit prepared by Dr. Jenssen.

Mr. Coyle: We also told you that he won't testify unless the judge admits this evidence, which we consider contrary to his pretrial order.

Mr. Alsup: Q. And you said you read his statement quoted in the Commercial Bulletin, "... it is evident that by 1970 or 1975 the supermarket as we know it today in Los Angeles will have been relegated to a second-class role, and local operators who continue to expand with conventional markets in conventional type locations are pouring money into the traditional 'rat hole'" and you said that you had read that and read other similar articles quoting Dr. Jenssen; is that correct?

A. That is correct.

Mr. Coyle: I don't remember him saying he read similar [fol. 29] articles quoting Dr. Jenssen.

Mr. Alsup: Q. Have you read other articles?

A. I do say that this quotation appeared in several publications and I think I read most of them.

Q. I show you a document which will be marked Von der Ahe Exhibit No. 2 for Identification from the Food Mart

News for February 17, 1961 and ask you if you can identify it.

Mr. Coyle: May I see it first, please.

The Witness: What do you mean "identify it"? Do I recognize it?

Mr. Alsup: Q. Yes.

A. I will answer and say, yes, this is an article that purports to quote Dr. Ward Jenssen, in which he says, "Food discount operations posing threats to traditional supermarkets."

Mr. Alsup: I will ask that that be marked as Von der Ahe Exhibit No. 2 for Identification.

(The document referred to was marked by the notary public as Von der Ahe Exhibit No. 2 for Identification and is attached hereto.)

Mr. Alsup: Q. I show you two clippings, one from the Southern California Grocers Journal for August 25, 1961 and one from the Commercial Bulletin for August 25, 1961, the first article entitled "Supermarket Out By 1975 Says Jenssen," and the second entitled "Discount Store Influence Seen Causing Gradual Demise Of Today's-Type Super." I will ask you if you have previously seen these articles.

[fol. 30] A. The answer is, yes, I have seen both of these before. They are along the same lines as the last article shown in the Food Mart News.

Mr. Alsup: I will ask that these two articles be marked as one exhibit, being Von der Ahe Exhibit No. 3 for Identification.

(The clippings referred to were marked by the notary public as Von der Ahe Exhibit No. 3 for Identification and are attached to the deposition.)

Mr. Alsup: Q. I show you a third clipping taken from the Commercial Bulletin for October 6, 1961 and I ask you if that is the article that is referred to on Pages 26 and 27 of your affidavit.

A. Yes.

Mr. Alsup: I will ask that this be marked as our exhibit next in order.

(The clipping referred to was marked by the notary public as Von der Ahe Exhibit No. 4 for Identification and is attached hereto.)

Mr. Alsup: Q. I show you an article from Food Merchandising for April 1962 entitled "Price Reduction Only Stopgap Measure," and underneath that, "Dr. Ward J. Jenssen, Marketing Consultant," and ask if you can identify this article.

Mr. Alsup: Do you want to see it?

[fol. 31] Mr. Coyle: No, I don't want to see it.

The Witness: Yes.

Mr. Alsup: Q. That article, Mr. Von der Ahe, states, "Conventional retailers have responded to discount competition with price reductions. This strategy will prove effective as a stopgap measure only and cannot for long save the conventional retail outlet from its ultimate disappearance from the American scene." And it goes on. Do you agree with Dr. Jenssen's conclusion?

A. Well, I do not wish to argue with the learned doctor but I am not wholeheartedly in accord with him and I disagree with some of the conclusions that he arrives at. I think that discount houses are probably here to stay. I think that there is a place for them but I do not believe that they are going to upset the entire food retailing system such as we have known it in the past.

Mr. Alsup: I will ask that this now be marked as our exhibit next in order.

(The document referred to was marked by the notary public as Von der Ahe Exhibit No. 5 for Identification and is attached hereto.)

Mr. Alsup: Q. Have you seen other predictions, Mr. Von der Ahe, with respect to the growing importance of discount houses as retailers of groceries in competition with the conventional grocery store?

[fol. 32] A. I attended an annual meeting of the National Association of Food Chains in Chicago in 1961, at which

time they had two operators of discount houses, whose names I forget at this moment, but they are readily available, who predicted that the store of the future was going to be a large single-roof operation operated on a discount basis. I have also seen an article prepared by the U.S.D.A., I believe it was, in which they also conveyed the thought that discount houses would impose a very serious threat to conventional supermarkets because of their farther range of draw, we will say, because of the price appeal, because of their ability to operate more cheaply than supermarkets. They pose a serious question that discount houses as such would be a very serious factor to contend with in the future.

Q. I show you an article taken from the Commercial Bulletin for February 16, 1962 quoting a report of the United States Department of Agriculture, which states in part that discount supers now have an estimated two billion annual volume and may quadruple in four years, and that they "will have an important influence on traditional patterns of distribution." I will ask you if this is the U.S.D.A. report to which you refer.

A. Yes.

Mr. Alsup: I will ask that this be marked as Von der Ahe Exhibit No. 6 for Identification.

(The document referred to was marked by the notary [fol. 33] public as Von der Ahe Exhibit No. 6 for Identification and is attached hereto.)

Mr. Alsup: Q. Mr. Von der Ahe, in response to a question by Mr. Coyle you said that in your opinion the milk depots have been doing business in this area for approximately ten years.

A. That was a guess as to the number of years, yes.

Q. Have you seen any change in the number of milk depots doing business in this area in the last three years?

A. They are constantly increasing in numbers.

Q. Have you observed that the milk depots can sell their milk—

Mr. Coyle: You are leading him now, Mr. Alsup.

Mr. Alsup: Q. What price do the milk depots sell their milk at?

A. The State permits milk depots to sell their product at a discount under the retail prices which the State has set for the regular market outlets. This discount has given the milk depots a tremendous advantage and as a result have the trade that they attract with these lower milk prices and they are also getting into other related grocery items such as bread, cakes, snack items, beverages and actually expanding their field into grocery items all the time.

Q. How long has this expansion into other grocery items been going on?

A. It seems to be gathering momentum all the time.

[fol. 34-35] Q. Is milk——

Mr. Coyle: You asked him the question how long it has been going on?

Mr. Alsop: I am sorry.

The Witness: To pinpoint it to days and dates, I am unable to do that, except to say that it is noticeable and it is continuing at a more increased pace all the time. If you will look at the statistics that the State puts out you will find that these milk depots are now accounting for about 16 to 17 per cent of all the fluid milk products sold in this milk shed, which is a considerable amount of business.

Mr. Alsop: Q. Is milk an important or relatively unimportant item in grocery store sales?

A. It is one of the very basic staple items and of extreme importance.

Q. Do you have any idea whether there are more or fewer of these drive-in milk depots since the merger occurred with Shopping Bag in March of 1960?

A. I am convinced that there are many more.

Q. You testified in response to Mr. Coyle's interrogation that liquor stores have been selling groceries in this area since 1935. I ask you if you have seen any change in the picture since March 25, 1960.

A. I am not sure I understand your question, Mr. Alsop.

Q. Are there more or fewer liquor stores selling more or fewer grocery items?

[fol. 36] A. I believe it could be a general statement that these liquor stores are expanding their lines to convenience foods, snack items and those items which they can readily sell, such as party items and so forth.

Q. You were asked about the Speedee Marts. Do you have any knowledge of any other bantam stores which have commenced doing business in the metropolitan area?

A. I feel there are some but I can't give you a name right now.

Q. Have you heard of Pronto Marts?

A. No.

Mr. Coyle: You are leading the witness, Mr. Alsup.

Mr. Alsup: I have a perfect right to ask the question, "If he has heard."

The Witness: No, I have not heard of Pronto Marts.

Mr. Alsup: Q. Have you heard of Tiny Tims?

A. I have heard of Tiny Tims.

Mr. Knight: I would like to object right here that counsel is leading his own witness.

Mr. Alsup: Q. What have you heard of Tiny Tims?

A. Frankly not too much.

Q. Do you know whether or not there are any doing business in the Los Angeles metropolitan area?

A. No.

Q. Have you heard of Minit Marts?

A. Yes.

[fol. 37] Q. What have you heard about Minit Marts?

A. Not too much.

Q. Going back——

A. I am not very familiar with that type of operation.

Q. Going back to these drive-in milk depots, Mr. Von der Ahe, you testified that they are doing 16 per cent of the milk business in this milk shed. What did you mean by the phrase "milk shed"?

A. Well, that is a phrase used in the dairying business to describe a marketing area for retail marketing.

Q. What is that market?

A. Los Angeles metropolitan marketing area.

Q. Mr. Von der Ahe, I think you testified that Safeway, in your opinion, has more stores in the area——

Mr. Coyle: I will stipulate he testified to that.

Mr. Alsup: Q. —at the present time than it had in 1940 and more than it had in 1950. Do you recall that?

A. Yes.

Q. Do you know how many Safeway stores there were in this area in 1930?

A. In 1930 I believe they had about a thousand stores.

Q. Do you know how many they had in 1940?

A. No.

Q. Do you have any knowledge how many stores A & P had across the country in the last 1930's?

A. I believe they had in the neighborhood of about 15,000 [fol. 38] stores.

Q. Do you know how many they have right now?

A. It's between four and five thousand.

Q. Based on your experience in the industry has there been a trend toward the disappearance of smaller stores and the growth of supermarkets?

A. Well, I think the answer is obviously, yes, that there has been a gradual disappearance of small stores and they are being replaced by the larger more conventional markets as we know them today.

Mr. Alsup: I have no further questions.

Redirect examination.

By Mr. Coyle:

Q. Mr. Von der Ahe, referring to Von der Ahe's Exhibits 2, 3, 4 and 5 for Identification, all of them being newspaper, magazine or bulletin accounts which purport to report speeches by Ward J. Jenssen, were you personally present at any of these speeches?

A. I did not hear him say it, no.

Q. As far as you are concerned this is hearsay then, is it not?

A. I am basing my judgment on what was reported as being remarks made by Dr. Jenssen.

Q. You are assuming that this is correct?

[fol. 39] A. I did not hear it myself.

Mr. Alsup: I think, Mr. Coyle, if you will look, that two of them do not purport to be speeches, they purport to be articles by Dr. Jenssen.

Mr. Coyle: Q. You mentioned that in your observation or opinion milk depots account for 16 per cent of milk sales in this marketing area. What percentage of milk sales are accounted for by door-to-door deliveries?

Mr. Alsup: May the record show that the witness is working with a pencil and paper.

The Witness: I believe the figure would be in the neighborhood of 32 per cent.

Mr. Coyle: Q. Ten years ago what would have been the percentage accounted for by door-to-door deliveries?

A. You are asking me to go a long way back in my memory, but I believe the figure would be closer to 40 per cent.

Q. Is it an accepted fact that the door-to-door deliveries are accounting for a decreasing share of the sales of milk in the Los Angeles metropolitan area?

A. I believe that is true.

Q. What about the chain grocery stores, are they accounting for a decrease—

Mr. Alsup: What chain grocery stores?

Mr. Coyle: Q. What about the grocery stores, are they accounting for an increasing or decreasing share of the total milk sales in the metropolitan area?

[fol. 40] A. We are speaking percentage only in all these figures that we are talking about?

Q. Yes.

A. The retail food industry through markets is also suffering a loss of milk sales percentagewise.

Q. How does it compare with the loss being suffered by the door-to-door deliveries?

A. I would say that it is rather hard to compare the loss suffered by door-to-door deliveries unless you treat this in percentages only. And I think that both door-to-door deliveries and out of market have suffered about the same percentage decrease which has gone to these milk depots.

Q. Have you made any study to determine this?

A. I am quoting from memory of reports that are put out by, I think it is, the Milk Control Board of the State of California.

Q. Are the large chains in the area presently permitted by the Control Board to sell at a discount price?

Mr. Alsup: I object to the form of the question on the ground that it uses the phrase "large chains."

Mr. Coyle: Q. Are any chains in the area permitted to sell milk at the present time at a discount price?

A. I have to say all markets have the same retail price for milk, regardless of whether they are an independent or a chain.

Q. Who fixes that price?

[fol. 41] A. The State of California.

Q. And have they temporarily lowered that price?

A. At the present time there is an injunction against the Director prohibiting him from removing quantity discounts on milk. And so all retail market outlets are selling at a discount price but it is not as large a discount as milk depots are enjoying.

Q. Was your chain one of the chains that sued to have the injunction imposed?

A. Yes.

Q. And as a result of that injunction did you reduce the price on milk in your stores?

A. I don't think that was the result of the injunction. I think the result of the injunction was to allow us to continue to give this quantity discount.

Q. And in giving this quantity discount are you selling at a lower price than certain of your competitors?

A. No. Identical prices throughout the area.

Q. Is this price fixed for the mom and pops? Are the mom and pops able to sell milk at the same price as you?

A. Yes, sir.

Q. Are they in fact selling milk at that price?

Mr. Alsup: Which mom and pops?

The Witness: To that I don't know. But I believe they have the right to sell at the same price as everybody else and I am assuming that they do, because milk is such a [fol. 42] highly competitive product.

Mr. Coyle: Q. What is the quantity discount?

A. Gee, I don't know.

Q. Is it the quantity purchased by the consumer?

A. Yes. It is based on the amount bought by the consumer.

Q. You state that it is your observation that there are

more milk depots in the area now than there were at the time of the acquisition. Are there more people in the area too?

A. What area are we referring to?

Q. Los Angeles metropolitan area.

A. I believe it is safe to assume there are.

Q. Do you know whether the increase in the number of milk depots has exceeded the increase in population on a proportionate basis during that period?

Mr. Vaughn: You mean a percentage basis?

Mr. Coyle: I am asking if he knows.

The Witness: The answer is, no, I don't know.

Mr. Coyle: I have no further questions.

Recross-examination.

By Mr. Alsup:

Q. Mr. Von der Ahe, in your examination by Mr. Coyle you showed him a clipping from the Commercial Bulletin [fol. 43] for March 19, 1963 entitled "Southern California Discount Centers (Volume General Stores With Food Departments)." I ask you if this is the document which you exhibited to Mr. Coyle.

A. Yes.

Mr. Alsup: I will ask that this be marked Von der Ahe Exhibit next in order.

(The clipping referred to was marked by the notary public as Von der Ahe Exhibit No. 7 for Identification and is attached hereto.)

Mr. Alsup: That is all.

Redirect examination.

By Mr. Coyle:

Q. Referring to this Von der Ahe Exhibit No. 7 for Identification, and calling your attention to the store entitled "Venox," it is in the third column, the second from the bottom, have you ever inspected that store?

A. This store happens to be in Oxnard.

Q. Is that outside the Los Angeles metropolitan area?

A. This is in the County of Ventura.

Q. You have never inspected that one?

A. No, sir.

Q. Referring to the store marked "Sage Department Store," is that in the Los Angeles metropolitan area? It is [fol. 44] in the second column, second from the bottom.

A. That is in Bakersfield.

Q. Is that outside the area?

A. That is in Kern County.

Q. Referring to the store entitled "Mednick Brothers," is that in the Los Angeles metropolitan area? That is in the fourth column. The address is listed as Compton. Is that in the Los Angeles metropolitan area?

A. Yes, that is in the L.A. Metropolitan area.

Q. Have you inspected that store?

A. I have been in that store before it became known as Fantastic Fair City.

Q. When was that?

A. This was several years ago. As I understand it it was an operation that was not very successful as a super-market and they converted it to a discount house.

Q. How long ago were you in there?

A. Oh, this is a very old store. I have been in it three or four times.

Q. When was the last time?

A. I can't even remember.

Q. Was it more than three—

A. I have not been in it since it has been operated as Fantastic Fair City.

Q. You do not know what size, shape or type of grocery department it has, do you?

[fol. 45] A. Not since it has been converted, no.

Q. Prior to being converted it was a conventional super-market?

A. Right.

Q. How many square feet of space did it have in it when you inspected it?

A. I would guess around 15,000 feet.

Q. How many square feet does your biggest store have?

A. Our biggest store in sales area has square footage of about 22,000 square feet.

Q. Do some of your Shopping Bag Stores have department store sections?

A. Yes.

Q. Now referring to a store listed as SCOA, in the third column second from the top, have you ever been in that store?

A. No, sir.

Q. Do you have any personal knowledge as to what kind of operation SCOA has out there?

A. I do not, no.

Q. You took no part in preparing this exhibit or making this list?

A. This?

Q. Yes.

A. Absolutely not. This is prepared by the Commercial Bulletin, which is one of the trade papers here in Los Angeles.

[fol. 46] Q. You have no way of knowing, or no personal knowledge as to whether these individual statements are true or false that appear on this document?

A. I don't understand your question. What do you mean the statements being true or false?

Q. Whether or not there is a SCOA store at Orange and Service Road, West Covina, and whether or not it has a grocery department in it.

A. The answer is I have been by the store, I have seen it. I have not been in it.

Q. You don't know whether it has a grocery department in it or not?

A. But it is represented by Commercial Bulletin as having a grocery department, and they are reliable. I would say they do have a grocery department there.

Q. On the basis of the representation made by the Commercial Bulletin?

A. Yes.

Q. But not on the basis of your own personal knowledge?

A. That's right.

Mr. Coyle: I have no more questions.

Recross-examination.

By Mr. Alsup:

Q. Mr. Von der Ahe, you were asked how many square feet your largest store in your chain has in selling area and [fol. 47] I think you testified it was 22,000 square feet.

A. That's right.

Q. Do you have grocery stores with lesser square feet?

A. Oh, yes, very much.

Q. What is the smallest one in terms of square feet of selling space?

A. We have some very small ones, the exact footage I do not know. But I daresay that we have some with less than 6,000 feet of selling area.

Q. What is your highest grossing store in terms of annual sales?

A. We have several stores that will gross around \$5,000,000 a year.

Q. What is your worse annual grossing store?

A. I believe we have one store that is going at the rate of about \$800,000 a year.

Q. Where is that located?

A. That is located on Huntington Drive and San Gabriel Avenue.

Q. That is a former Shopping Bag Store?

A. It is still operated under the Shopping Bag name, yes.

Q. Is that a profitable store?

A. No.

[fol. 48] Q. Would it be profitable, in your opinion, for a single store operator operating that store?

A. Oh, very much so.

Q. How large is your Store No. 22 in Reseda?

A. I believe the figures are it is 160 feet by 140 feet. Do you want me to calculate that out? That would be 24,400 feet on the ground floor.

Q. What selling space would that represent?

A. The selling space normally is around two-thirds of the ground floor area. So this would be in the neighborhood of 16,000 square feet.

Q. When was that Store No. 22 built?

A. I think it was built around 1953. I am not sure exactly but it was in that area.

Q. Do you have any idea what the draw area was of that store in 1953?

A. In 1953, or at the time the store was built, we sort of pioneered the neighborhood and had a rather large draw area. By that I mean we actually attracted 25 per cent or so of our trade from beyond five miles.

Q. What has happened to the draw area of that store?

A. Well, as more people have moved in there have been more markets move in and each one has taken a certain amount of business so that the store which once did \$6,000,000 or more per year is now down to two and a half million or so per year. Our draw area has been restricted to just what is now convenient for the immediate neighborhood to [fol. 49] come in and patronize us because there is no longer any reason for them to go—for our customers to go past other markets and come to us. In other words, our draw area has been considerably restricted because of the influx of competition on all sides of us.

Q. And during what period are you referring to?

A. This has been a gradual declination, I would say, from 1956 on.

Q. Since March 25, 1960 have there been declines in the draw areas or in the grosses of your stores, or the Shopping Bag Stores in 1960?

A. I think it could be a general observation that older stores, those that have been in existence since March 25, 1960, have all suffered by having their draw areas restricted and it would follow that their gross sales have also been declining.

Q. Since March 1960 have you constructed new stores?

A. Yes.

Q. Have you constructed new stores outside the Los Angeles metropolitan area? By that I am referring to Los Angeles County and Orange County.

A. Yes.

Q. Would you state for the record what stores Von's has now outside the Los Angeles metropolitan areas as compared to what Von's or Shopping Bag had in March 1960?

A. We have opened a store in Oceanside, which is in San [fol. 50] Diego County; we have opened a store in Ventura, which is in Ventura County; we have opened a store in Camarillo, Ventura County; we have opened a store in

Canejo Park, or Thousand Oaks, Ventura County; we have opened a store in Santa Susana, which is Ventura County; we are building a store in Carona, which is in Riverside County. That is all that comes to my mind right now.

Q. Shopping Bag at the time of its merger with you in 1960 had two stores in San Bernardino County; is that correct?

A. That's correct. They had one in Fontana and one in Upland.

Q. And you still have those stores?

A. We still have those stores.

Mr. Alsup: I have no further questions.

Mr. Coyle: I have one question.

The Witness: I have to back up here. I think Ontario is also in San Bernardino County and we have opened a store there.

Redirect examination.

By Mr. Coyle:

Q. You have indicated that you have at least one store that you believe an independent can do better in than you people.

A. That's very true.

[fol. 51] Q. How many stores altogether are in that category?

Mr. Vaughn: How many of Von's Stores?

Mr. Coyle: Q. How many of the Von's-Shopping Bag Stores?

A. Mr. Coyle, I think we have about five stores that an independent could operate very successfully.

Q. And an independent couldn't operate any of the other stores successfully?

A. I didn't mean to imply that.

Q. That is what I was asking you. How many of your stores could an independent operate successfully?

A. An independent could operate any one of our stores successfully.

Q. Just as successfully as you are operating them?

A. Better.

Q. But he couldn't get in the shopping centers.

A. This I don't know.

Q. If he didn't have Triple A financing he couldn't get in, you know that. You said it in your affidavit.

A. The financing in shopping centers is one that an individual as such, regardless of his financing, cannot get into a shopping center because the lender has got to be assured of the ability of the tenant to repay his investment. And it has to be a corporation to do that.

Q. What areas are these five stores in? Let me ask it another way. Are any of these five stores that an independent could do better than you are doing in, in Whittier?

[fol. 52] Mr. Alsup: I think that misstates the testimony of the witness, Mr. Coyle. I believe the witness testified he had five stores that they are not operating successfully that an independent could operate profitably.

Mr. Coyle: Q. Are any of those stores in Whittier?

A. No.

Q. Are any of them in Garden Grove?

A. Yes.

Q. How about Downey?

A. No.

Q. Alhambra?

A. Time out. I have to write down the stores first. Roughly we have about five borderlines.

Q. In what areas are they, could you tell me? Including the one in Anaheim?

Mr. Alsup: Why don't you ask him, Mr. Coyle, and he will give them to you.

The Witness: I will give them to you as they come to my mind readily.

We have a store in Eagle Rock, we have a store I already mentioned on Huntington Drive in San Marino, we have a store at Fairfax and Olympic. I wasn't thinking about the one you mentioned in Garden Grove, but it is actually in Anaheim and I add that to the list.

Mr. Coyle: Q. You have four so far.

A. I will give you the store on Valley Boulevard in [fol. 53] Alhambra. I will give you another store in Lancaster. We have increased the list already.

Q. Are any of these stores up for sale?

A. No.

Q. Do you think that some of them in Lancaster will be profitable if you hold onto them long enough?

A. We have made no effort to dispose of them yet. We are making every effort to make them profitable and should we fail to make them profitable we will dispose of them.

Mr. Coyle: I don't have any more questions.

Recross-examination.

By Mr. Alsup:

Q. This store in Eagle Rock, Mr. Von der Ahe, was that a Von's or was it a Shopping Bag Store?

A. It was a Shopping Bag Store.

Q. Do you have any idea how old that store is?

A. Oh, it's 20 years old. I have no idea but it is real old.

Q. And this store on Huntington Drive in San Marino you testified is not profitable for you. Was that a former Von's or Shopping Bag Store?

A. That was a Shopping Bag Store.

Q. How about the one you mentioned on Fairfax and Olympic?

[fol. 54] A. That is a Von's Store.

Q. How about the one in Anaheim?

A. Shopping Bag.

Q. I think you mentioned a store on Valley Boulevard in Alhambra. What was that?

A. That is a Shopping Bag Store.

Q. How about the one in Lancaster that you mentioned?

A. Shopping Bag.

Q. Was it your testimony, Mr. Von der Ahe, that these are not profitable stores for your company?

A. That is correct.

Q. This Shopping Bag Store in San Marino on Huntington Drive, is that near San Gabriel Boulevard?

A. That is the north and south street there. Yes.

Q. How far is that from the Shopping Bag Store west on Huntington Drive in San Marino?

A. I guess about a mile.

Q. And that other was a Shopping Bag Store prior to the merger?

A. Also, yes.

Q. Have you made any observations as to whether or not Shopping Bag Stores generally were located close or far apart from one another?

Mr. Coyle: That is a pretty vague question.

The Witness: I don't know if there would be any general scheme involved, but I have noticed that some Shopping Bags were opened rather close to existing markets, much [fol. 55] closer than some of the Von's markets that I can think of. But in each case I could see where Mr. Hayden was trying to serve a neighborhood or an area, and there are some instances where the stores are fairly close to each other.

Mr. Alsup: I have no further questions.

Redirect examination.

By Mr. Coyle:

Q. Are you considering disposing of any of those stores in those neighborhoods where they are fairly close to each other?

A. Not over above what I have just given to you, with maybe some few exceptions that don't come to my mind.

Q. Maybe a few more in addition to these six that are borderlines?

A. Time will tell.

Q. Have you disposed of any stores in the last three years?

A. No.

Q. When did you last dispose of any stores?

A. We disposed of a store at Manchester and Vermont and I can't guess how many years ago it was now. But I would just say seven or eight years ago.

Q. Did you sell that to an independent?
[fol. 56] A. Sold it to an independent.

Q. Is he still operating it?

A. Yes. And making money.

Mr. Coyle: No more questions.

Mr. Alsup: No more questions.

(It was stipulated by and between counsel that the fore-

going deposition be signed before any notary public with the same force and effect as though read, corrected and signed in the presence of the notary public before whom it was taken.)

—, —, (Signature of the Witness.)

Subscribed and sworn to before me this — day of —, 1963.

—, —, Notary Public, in and for the County of Los Angeles, State of California.

[fol. 57] STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, HAROLD M. LEIBOVITZ, C.S.R., a Notary Public within and for the County of Los Angeles and State of California, do hereby certify;

That prior to being examined, THEODORE A. VON DER AHE, the witness named in the foregoing deposition, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken before me pursuant to oral stipulation, at the time and place therein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; that the said deposition is a true record of the testimony given by the witness;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness before any notary public in and for the County of Los Angeles, State of California.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal, this 6th day of June 1963.

Harold M. Leibovitz, Notary Public in and for the County of Los Angeles, State of California.

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1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

DEFENDANTS' EXHIBIT BB

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title Omitted]

AFFIDAVITS OF DEFENDANT'S OTHER INDUSTRY WITNESSES

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AFFIDAVIT OF JOHN COKER

STATE OF CALIFORNIA,
County of Los Angeles, ss:

JOHN COKER, being first duly sworn, does hereby depose and state as follows:

I am the Regional Sales Manager for the American Chicle Company. I have been with that company for 28 years, 14 of which have been spent primarily in the Los Angeles area.

American Chicle Company sells chewing gum, mints and certain other products to virtually every grocery store in the Los Angeles Metropolitan area. Our customers also include drug stores, liquor stores, and other retail outlets. Grocers in Los Angeles can buy our products directly or through Certified Grocers of California, Ltd. or other co-operatives.

In order to conduct my business properly, it is necessary for me to become well acquainted with the business operations of my customers. As a result, I am quite familiar with the business conducted by all of the larger chains and many smaller concerns in the retail grocery business in this area.

In my opinion, the single store operator or small chain has every opportunity to compete successfully against the larger chains. The smaller concern has greater flexibility in the merchandising methods he employs and he can make changes in his operations more quickly than a chain. The

sale of chewing gum, for example, depends in large measure on where and how it is displayed in a store. We are constantly urging our customers to display our products in display racks, which we will provide, and to locate them in the most desirable place in their store, which is usually close to the check-out stands. I know from my own experience that once you persuade a single store operator to follow your suggestions, he can make the necessary changes in a matter of hours. But when you are dealing with a chain executive, the task is far more complicated. We must supply him with the display racks and find a means of getting them to the stores. He must send out bulletins to all of his store managers instructing them to make the change. Invariably, days elapse before the change is actually accomplished. The same thing happens with other products and other changes which any grocer, whether large or small, is continually making. It is obvious that in this respect the independent can always get the competitive jump on the chains.

Also, the independent can buy his groceries as cheaply if not cheaper than the chains through Certified or Orange Empire Co-op. People sometimes do not appreciate what a tremendous factor Certified is in this market. My company's records show that Certified is the largest, single customer we have in the United States. Through its buying power, an independent can gain every possible buying advantage which a direct buying chain enjoys.

In my opinion, as long as smaller concerns have these advantages, there is no reason to conclude that the chains now doing business in Los Angeles will attain a position of economic dominance.

I do not see how the merger of Von's and Shopping Bag could in any way affect the competitive opportunities of smaller concerns, or stifle the growth of any grocer who may want to expand his business. Most of this area's larger chains began right here as one or two store operations and you can bet that there are a number of small concerns in the business today who will expand into chains in the next 10 or 20 years. The growth of smaller concerns into large local chains has characterized the grocery business for years, and I know of no valid reason to suspect that this will not be the case in the future.

I suppose that my views with respect to the Von's-Shopping Bag merger boil down to this. That merger occurred in March, 1960, nearly three years ago. So far as I can see, that merger has thus far proven to be an insignificant event in the history of grocery retailing in this area. It has been productive of no discernible change. It has not brought any new and powerful concern into the area nor has it resulted in the closing of any stores. Both Von's and Shopping Bag stores continue to do business from the same stands just as they did before the merger. There is no doubt that since March, 1960, some changes have occurred in grocery retailing in this area. Many new stores have been opened. Discount houses have begun selling food. Experiments in the operation of bantam stores and so-called convenience markets have been instituted. Liquor stores and other types of outlets have begun selling more and more grocery products. We have experienced a mild recession. Some larger chains have failed. Others, such as Food Giant and Alpha Beta, have expanded rapidly. But I cannot think of a single change in the grocery business which attributable even indirectly to the merger. The merger has not affected competition, competitors, methods of doing business, entry into the market or any other aspect of grocery retailing. It seems to me that if the merger has had no adverse effect on competition in the last three years, it is reasonable to conclude that it will have no such effect in the next three or the next thirty years. For this reason, I am of the view that the merger cannot possibly lessen competition or tend to create a monopoly.

John Coker.

Subscribed and sworn to before me, this 13 day of February, 1963.

Kathryn E. Hagerty, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 22, 1963.

AFFIDAVIT OF CHARLES CHAMBERLAIN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

CHARLES CHAMBERLAIN, being first duly sworn, does hereby depose and state as follows:

I am the President of City Refrigerator Co., a company which supplies store fixtures to retail grocery concerns in Southern California, and principally in Los Angeles and Orange Counties.

Commencing in the late 1920's, I was associated with Castendyck Construction Company. Our business included developing various properties for use as retail grocery stores in the Los Angeles area. We would choose a likely location, draw plans for the store, interest the owner in building it, find a tenant to operate it, erect the building, supply the operator with necessary fixtures, help him with the layout of his store and in any other way possible promote the development of the store.

In the early 1930's, I went into the business of selling fixtures to grocers. In order to promote the sale of fixtures, I promoted the development of grocery stores and assisted the grocer with the layout of the store.

This sort of promotion usually followed a pattern. First, I would find a location which I thought would make a good grocery store. I would contact the owner of the property and tell him I thought I could find him a tenant who would pay \$500 a month in rent. If the owner expressed interest, I would try to find a groceryman or someone interested in going into the grocery business who might be willing to operate a store at this location. I would try to sell him on the location. I might suggest that he sign the master lease on the store but operate only the grocery concession. I would then suggest that I could find a meat man to run the meat department who would pay \$150 a month rent, a produce man to run the produce concession and pay the same amount, and operators for the delicatessen and dairy departments who would pay \$125 a month each. This would allow the grocery concession to be operated rent free. If the grocer approved this plan, I would then find the tenants

to operate the other concessions. If I was successful, I would then design the interior layout of the market for each concessionaire and sell them the fixtures.

In later years, it became popular for one man or one company to operate all concessions in a store. Later the supermarket developed and larger stores were built. I continued my efforts to find locations for these stores and promote their development in order to sell fixtures. I am sure that it would be no exaggeration to say that I have promoted the development of hundreds of grocery stores.

I performed these kinds of services for most of the successful grocers doing business in Los Angeles in the 1930's and 1940's. Among my customers were Ted and Will Von der Ahe, who started Von's Grocery Co. with one store in the early 30's and have built it into a large chain; Rube Hayden, who developed the Shopping Bag Chain from a one store beginning; Sam Alexander, who developed Alexanders Markets from one store; Bill and Larry Fredricks, who operated the Hollywood Ranch Market, and many, many others. Today, my customers include grocery concerns, both large and small, doing business in all parts of Southern California.

While I still plan store layouts for my customers, in recent years I have been able to forego some of the other elaborate promotional techniques which I used to employ in order to sell fixtures. Nonetheless, I am still well acquainted with the location, merchandising methods, facilities and management of countless grocery stores in Los Angeles and elsewhere. I am active and interested in the grocery business and I think I know it pretty well.

Ever since I can remember, I have heard some people say that the days of the independent were numbered and that the grocery business in Los Angeles would soon be dominated by chains. These predictions have proven false in the past and will in the future, in my judgment. I base my opinion in this respect on a number of things.

First, there is no question in my mind that an independent has an excellent competitive opportunity in Los Angeles. A grocery store is a business run by people. It does not run itself, and its success or failure depends on the ability and effort put into it by the people who own and operate it. A single store operator is always in his store,

personally overseeing all aspects of his business and directing all his attention to that one store. A chain executive, no matter how good a groceryman he may be, must divide his attention and talents among many stores. He must run his business through supervisors and store managers while he sits in chain headquarters. He cannot make his decisions on the basis of competitive conditions in one community but instead he must consider all of his stores and he must formulate a chain-wide policy. As a result, the independent gains a tremendous competitive advantage in terms of his ability to move quickly and decisively with only the operation of one store in mind and without having to take into account the wide range of complex problems which confront any chain by reason of its larger and more diversified operations.

In the same vein, a single store operator can personally serve his customers, get to know them, and gain their confidence and friendship by personal contact. "Personality" is of great importance in attracting and holding customers in the grocery business. A store will reflect the "personality" of its owner, and in this respect, an independent can create and maintain a friendly, courteous, appealing atmosphere which contrasts with the always more or less impersonal atmosphere of any chain store.

An independent can personally supervise his business and by watching costs closely and contributing his own labor to his business, he should always be able to earn a greater margin of profit on every dollar of sales than the chain.

Finally, through Certified Grocers and other buying co-operatives, a small concern can buy its groceries for no greater cost than paid by the chains.

Thus, there is plainly an excellent opportunity open and available to almost any qualified person who wants to own a grocery store. Because of the proven ability of small concerns to compete successfully with larger chains and because entry into the grocery business is relatively easy, there always have been and still are many people willing to take advantage of this opportunity. In the past, a great number of these people have made a lot of money. Some have expanded their businesses into today's chains. Some have been content to operate one or two stores. The retail grocery business in Los Angeles has seen too many successes to ever conclude that in the years to come there will be no

new successes, no new chains or single store operators and no new opportunities. The past history of the business and the plain fact that opportunity still exists makes it appear inconceivable to me that the chains now doing business in Los Angeles will or can attain any degree of economic dominance.

Naturally, I recognize that the grocery business also has resulted in failure for some. Both large and small concerns have failed and some percentage of today's grocery concerns can be expected to fail in the future. I am familiar with the facts surrounding many of these past failures. In one case, failure may result from under-capitalization, in another case rapid over expansion may be the cause. Inexperience, lack of ability, changes in neighborhood from residential to commercial, and the apparent unwillingness of some to work hard have taken their toll, as they will in the future. But these failures did not occur because of any lack of opportunity or any competitive disadvantage suffered by small or large concerns.

Nor should these failures be regarded as necessarily resulting in net losses to competition. I am reminded of a statement made to me 30 years ago by Walter Oppen, who was at that time operating a small grocery store on Jefferson Boulevard near the University of Southern California. We were discussing the failure of a grocery store and the fear being expressed even then, that independent grocers were a dying breed. Walter said that he did not believe that the independently owned and operated grocery store would ever become extinct. Instead, he felt that there would always be others who would come to take the place of those who left the business. As he put it, "Independents are like flies; when one dies, six others come to the funeral." This was true then, and it still is. The past has shown that there is a steady stream of newcomers in the grocery business. No doubt they are attracted by the opportunities which I have previously tried to describe. But for whatever reason, they seem to keep coming.

In fact, I am willing to go out on a limb and make a prediction. In my opinion, in the next 10 years, we will see more grocery concerns in Los Angeles, both large and small, than at any time in the past 20 years. In making this prediction, I am aware of statistics which seem to show a decline in the number of grocery stores being operated in Los

Angeles and Orange Counties in the past decade or so. I do not know if these statistics are accurate. Also, if they take into account only grocery stores, they undoubtedly overlook the fact that other types of stores, including liquor stores, sell more groceries today than many small corner grocery stores. But if there has been a decline in the number of grocery stores, I am sure that it is due in large measure to the fact that the old, small, corner grocery store has been replaced by the large supermarket, which of course, does much more business and serves many more people than the older, smaller type store. Therefore, fewer of these large stores are needed. The competition waged by these larger stores is more intense today than ever, and is likely to become more so as newcomers enter the market and existing firms grow. And the fact that there are fewer stores today will not limit future opportunities for entry or growth, in my opinion.

So far as I can see, the merger of Von's and Shopping Bag has had absolutely no effect on the opportunities available to others in the grocery business, on the intensity of competition or on any other aspect of grocery retailing in Los Angeles. In my opinion, it is ridiculous to think that the merger could adversely affect competition or lead in any way to market dominance by Von's or anyone else. I just don't see how a merger of Von's and Shopping Bag could "tend to create a monopoly" in any way in an industry composed of hundreds of vigorous, able competitors who are successfully operating thousands of stores and opening new stores every day.

In fact, I believe that in at least one respect, the merger may have benefited competition by resulting in the preservation of the continued competitive activity of Shopping Bag's stores. From what I know of Shopping Bag's operations prior to the merger, there was a chance that without the merger, that concern would have failed. I base my views in this respect on three principal factors:

1. Shopping Bag's top management was dangerously "thin." Rube Hayden and perhaps one or two others in the Shopping Bag organization were and are very able grocerymen, but they did not have enough such people to take care of all the complex management problems which arise in the operation of a 38 store

chain. This meant that some of these problems had to be ignored or neglected.

2. Many of Shopping Bag's stores were in outlying areas which had been relatively free of strong competition for many years. But in the few years prior to the merger, these areas had caught the eye of other concerns, both large and small, who were building new stores to compete with Shopping Bag.

3. Shopping Bag for many years had engaged in a rapid expansion program on a minimum of capital and many people felt that Shopping Bag was under-financed. In early 1961 (after the merger), another company which had been doing the same thing—Fox Markets—finally filed a petition in bankruptcy. Hundreds of Fox's suppliers were badly hurt, and immediately suppliers throughout Los Angeles began cracking down on all grocery concerns in order to collect past due accounts and get their payments on a current basis so as to avoid losses such as had been experienced in the Fox bankruptcy. I believe that this pressure from suppliers dealt the final blow to other under-financed concerns such as Yor-Way Markets and McDaniels Markets and forced them into assignments for benefit of creditors. But for its merger with a well-managed, financially sound company such as Von's, it is possible that Shopping Bag would have suffered a similar fate.

In short, it is my opinion that the Von's-Shopping Bag merger benefited both companies and their stockholders and possibly saved the closing of some or all of Shopping Bag stores without in any way adversely affecting either competitors or competition and without in any way raising the slightest fear of domination of this market by Von's alone or larger concerns in general.

Charles Chamberlain.

Subscribed and sworn to before me this 15 day of February, 1963.

Eva M. Trisler, Notary Public in and for said County and State, [Seal.]

My Commission Expires April 29, 1964.

AFFIDAVIT OF CYRIL C. NIGG

STATE OF CALIFORNIA,

County of Los Angeles, ss:

CYRIL C. NIGG, being first duly sworn, does hereby depose and state as follows:

I am the President of Bell Brand Foods, Ltd., a company which sells potato chips, peanut butter, nut meats and other products to virtually every grocery concern doing business in Los Angeles and Orange Counties. We also sell our products in other areas of Southern California.

I have been engaged in the business of supplying grocers in this area since 1929 when I went to work as a salesman for the Kellogg Company. I was with that concern for 16 years, and during that time rose to the position of District Manager. In 1945, I purchased Bell Brand Foods, Ltd. and have headed that company ever since.

Since 1929, I have been intimately aware of developments in grocery retailing in the Los Angeles area. I have witnessed the growth of chains. I am acquainted with the business operations of many independents. I have seen grocers, both large and small, succeed, and I have seen others fail.

I have been asked by attorneys for Von's Grocery Co. to express an opinion as to the effect of the merger of Von's and Shopping Bag Food Stores on competition in the retail sale of groceries in Los Angeles and Orange Counties. In my opinion, that merger has not and will not affect competition in any way for the following reasons:

1. In the first place, there were very few Von's and Shopping Bag stores near enough to each other to compete for the same customers. For the most part, Von's had its stores in the south-western sections of the Los Angeles metropolitan area while Shopping Bag stores were located mainly in the northern sections. Thus, there was little, if any, competition between the two concerns which could have been affected by the merger.

2. There are literally hundreds of grocery concerns in Los Angeles and Orange Counties operating thousands of stores. In every community served by a Von's

or Shopping Bag store there are stores of other chains and independents effectively competing for the patronage of customers.

3. The merger gave Von's no competitive advantage over its rivals. It has been proven time and again both before and since the merger that any experienced, hard-working grocer can compete successfully in this area. The single-store operator can compete very effectively with chain stores. He can buy his groceries as cheaply as chains through Certified Grocers or some other cooperative. He can operate with greater flexibility than a chain. I cannot conceive of any reason why an independent grocer could not compete as effectively now against a Von's or Shopping Bag store as before the merger. If anything, he ought to be doing better since Von's is now a larger and hence more impersonal, less flexible chain.

4. The grocery business in Los Angeles has always been characterized by change, innovation and the emergence of new concerns. This is as true today as ever. Discount houses are selling groceries. So are liquor stores and other types of establishments. Competition is coming from an increasing number of new sources. Under these circumstances, I cannot see how the merger of Von's and Shopping Bag could in any possible way lead to a monopoly or domination of the retail food business by a few large concerns.

Cyril C. Nigg.

Subscribed and sworn to before me, this 11th day of February, 1963.

Helen E. Bean, Notary Public in and for said County and State, [Seal.]

My Commission Expires June 3, 1966.

AFFIDAVIT OF EDWARD F. PASINI

STATE OF CALIFORNIA,
County of Los Angeles, ss:

EDWARD F. PASINI, being first duly sworn, does hereby depose and state as follows:

I am the Plant Manager and Southern California Manager of Langendorf United Bakeries, Inc., a position I have held for the past thirty-five years.

Langendorf sells bread and other bakery products to virtually all the grocery stores located in Southern California. In addition, Langendorf sells its products to other types of retail establishments, such as liquor stores and to institutional and restaurant accounts.

Our customers are solicited and deliveries of our products are made to them by route men who are assigned specific territories. We also have supervisors whose duty it is to supervise and regulate the activities of our route men. As part of their job, these employees are required to become familiar with the location and business affairs of every customer or potential customer in their respective territories. Of course grocery stores have always been the principal outlet for Langendorf products, and our route men and supervisors have a particular knowledge of the grocers and grocery stores in their territories.

It was because of this fact that in April 1962 attorneys for Von's Grocery Co. came to Langendorf and to me with a request that through our route men and supervisors we conduct a survey of certain designated grocery stores in Los Angeles and Orange Counties. Von's attorneys advised us that they had obtained from the California State Board of Equalization a list of the names and addresses of grocery stores which had allegedly closed their doors in 1960 and a list of the names and addresses of grocery stores which had allegedly opened in 1960, but which were closed by November 15, 1961. The list of grocery stores closed in 1960 was designated as "Table A." It was segregated into stores operated by companies with two or more outlets (multiple outlet concerns) and companies with only one outlet (inde-

pendent grocery stores). The list of stores opened in 1960, but closed by November 15, 1961, was designated as "Table B," and was similarly segregated.

Von's attorneys wanted us to check the accuracy of those tables and to supply any other information concerning the stores in question. In order to comply with this request, I instructed our route men and supervisors to check each location listed on Tables A and B and to provide me with any information they had or were able to find out concerning it. I made it clear to the route men and supervisors that their reports should be accurate and complete. I instructed them not to speculate or guess, but to be sure that their reports were in all respects correct.

Our check was made in April and again in October, 1962. Our route men and supervisors checked a total of 295 locations in all. We found that 16, or approximately 5% of them, were not now and, so far as we could tell, never had been grocery stores. For example, in one case the location listed by the Board of Equalization had been a hot dog stand for a number of years and was still being operated as such. In another case, the location was a private home. In addition, we found that 19 of the stores checked (approximately 6%) were still being operated by the persons or entities which, according to the Board of Equalization, had ceased doing business at the location listed. In addition, we found that 20 of the stores listed by the Board in its tables were duplications of stores already listed at some other place in the tables. This apparent error accounted for approximately 6% of the total.

It is apparent that the above-referred to locations, totaling 55 in all, should not have been listed in the Board's tables in any case. They were either not grocery stores at all or had not been closed and had not experienced any change in ownership or they represented only a duplication of a store listed elsewhere on the Board's tables.

By subtracting those 55 stores from the total listed by the Board of Equalization, we are left with 240 locations. We found that a successor business entity had operated a grocery store at 81 (or more than 33%) of those 240 locations *after* the discontinuance of the business of the entity listed by the Board. In all but 12 of those 81 cases a grocery

store was still being operated at the location in question as late as October, 1962, when we made our last check. This shows that in a number of cases the discontinuance of the business referred to in the Board's tables did not result in the elimination of a grocery store, but only a change in ownership. We note that the Board's tables purport to reflect only the closing of stores which were not later operated as grocery stores by a successor concern. These 81 stores were improperly listed, therefore, because of the subsequent operations of a successor.

By adding these 81 stores to the 55 previously mentioned, it is apparent that the Board's tables include 136 locations which have no place in a list of grocery stores closed without any successor. Those 136 locations constitute 46% of the 295 stores listed.

Our study also showed that of the 159 stores remaining after elimination of those which were improperly listed, 18 (or approximately 11%) had been closed because the owner moved his grocery business to a new location. 29 (or nearly 20%) had closed because a freeway or some other public improvement had resulted either in the condemnation of the store property itself or of the surrounding homes it served. 21 (or more than 13%) were closed due to the death, retirement or illness of the owner. 5 (or 3%) were closed because of a fire or the loss of a lease. 2 (or 1%) were sold for a profitable sum to make way for another type of business such as a gas station.

This leaves only 84 of the total of 295 stores listed which closed for good because of business failure or for reasons which our route men and supervisors could not otherwise explain. Of these we found 5 locations which had not been used as grocery stores for several years prior to 1960. Most of these 84 stores were extremely small. In one case, the "store" consisted of a trailer parked a quarter of a mile off a highway in Lancaster on a bad dirt road. It had a total inventory worth about \$60. While this is an extreme example, it does show that almost any business, no matter how small and how unlike the customary grocery store, was listed as such on the Board's tables if it sold food products of any kind or in any amount. Also we found that in most instances the 84 business failures listed by the Board were poorly operated.

Our detailed findings are set forth below under the classifications and table headings used by the Board of Equalization.

Table "A"

Names and addresses of Grocery Stores of Multiple-outlet Concerns in the Los Angeles Metropolitan Area Listed by the Board of Equalization as Closed Out (Discontinued without a Successor) during 1960 in Los Angeles and Orange Counties.

Name & Address	Comments
Safeway 16241 So. Paramount Blvd., Paramount	Moved to a new, larger location just up the street. First State Bank now occupies this location.
Safeway 676 E. Green Street, Pasadena	Moved to So. Fair Oaks Ave. to new store. Old store had no parking facilities. Building now being used for Blue Chip Stamp Redemption Center.
Safeway 1208 E. Compton Blvd., Compton	Moved to new and larger location. Salvation Army now occupies store.
Safeway 7515 Long Beach, Walnut Park	Now owned and operated by Bob Kasperan as Signal #2.
Safeway 908 So. Hillview, East L.A.	Moved to new and larger store. No adequate parking. Now occupied by Anthony Loye, Inc., light garment manufacturing.
Safeway 1045 W. Washington Blvd., L.A.	Santa Monica Freeway took out homes served by this market. Now a Social Club.
Safeway 5121 W. Pico Blvd., Los Angeles	Moved to new store. Now occupied by a garage.
Safeway 120 So. Eucalyptus,	Moved to larger and better location about 2 years ago.

Name & Address

Comments

Inglewood

Location sold to Bestway Market, which later closed due to fire. Listed under Bestway on Tables A and B.

Safeway

220 E. Chapman St., Orange

Very small store and quite old, with inadequate parking. Moved to larger store approximately 6 blocks away in new shopping center. Location now occupied by Building & Loan Co.

Safeway

115 W. Colorado, Monrovia

Closed this store and moved to new one on Huntington Drive. Presently unoccupied.

Safeway

9130 W. Olympic, Beverly Hills

Closed store and moved into new building at Beverly Drive & Olympic Blvd. in October 1960. School at this location now.

Safeway

7323 So. Main St., Los Angeles

Moved to larger and better location. Catering Service occupied the building approx. July 1958.

Safeway

8207 So. Western Ave., Los Angeles

Moved to new and larger location 2 years ago. Building now used as Blue Chip Stamp Redemption Center.

Safeway

3455 W. 8th St., Los Angeles

Small store. Closed. Safeway opened new store nearby at 10th and Western.

Safeway

8221 Melrose Av., Los Angeles

Opened big, new store about 6 blocks away. Now business offices.

Safeway

5425 Long Beach Blvd., Long Beach

McCoy's Market took over and now operating this store. Safeway moved to new location.

Name & Address	Comments
Safeway 1930 E. Walnut St., Pasadena	Moved to new location. Building now used as Headquarters for flags, Horti-Van Advertisers.
Safeway 501 W. 4th St., Santa Ana	Old store and very small; inadequate parking. Moved to larger market. Now occupied by a furniture store.
Safeway 4903 So. Normandie Ave., Los Angeles	Safeway closed due to poor business and to build a new store in a more desirable location. Store has been open and operating under ownership of Buddha Market Inc. since January 1959.
Jolly Jim Markets 1945 E. 4th Ave., Long Beach Jolly Jim Markets 2420 Santa Fe Ave., Long Beach	Sold. Now F & W Market, owned by Ben Martin. Closed. Sold to Shop Rite Mkts., who operated it for a few months and moved. Building now occupied by Value Village Discount Mdse. (no groceries).
Fred Geonette 900 Aragon Ave., Los Angeles Rankins, Inc. 7421 Hillrose Ave., Los Angeles	Mr. Geonette still in business.
Kram's Foods, Inc 12714 Sherman Way, North Hollywood	Sold to Piggly Wiggly, who in turn sold to Country Cousins Mkts. Inc. Then purchased by Dick Stiener who is operating a grocery store there. Poor merchandising and a dirty operation closed the doors. A Mr. Clyde Cranmer now owns business and doing approx. \$60,000 a month. Location good. PL owned this between Kram and Cranmer.

Name & Address

Comments

Kram's Foods, Inc.
7133 Crenshaw Blvd., Los Angeles
Kram's Foods, Inc.
105 Windward Ave., Venice
Carl's Ranch Markets
12005 So. Avalon Blvd., L.A.

Store never closed. Now operating as Ram's Mkt.

Operates under name of Ritz Market.

Sold to Food King Market. Now operated as Ranch King Market #2.

Walkers Markets
700 Lower Azusa Rd. W., El Monte
The Pantry Food Markets
2044 E. Colorado, Pasadena

Sold. Now operating as Food Giant Mkt. #65.

This is a wrong address. It should be 3844 E. Colorado. Is now Big Ben Factory Shoe Outlet.

Mayfair, 402 Colorado Ave., Santa Monica

Closed because of lack of business. Sears bought out lease and made a sporting goods store of it.

Mayfair, 2225 W. Whittier Blvd., Whittier
Mayfair
8725 So. Broadway
Los Angeles

Sold. Now operating as Patton's Market #8.

Sold to Mike Levy when it was called Market Place. Sold to Micky Moss, who went bankrupt. Store still unoccupied.

Valley Stores, Inc.
14907 Magnolia Blvd., Van Nuys
Mayfair
18401 Van Owen St., Reseda

Closed. Now used for Blue Chip Redemption Center.

Sold to Fox Market (#9). Operated by them until August 1, 1962, then closed. Their lease expired and they didn't renew it. Building now up for lease.

Mayfair
1131 E. Wardlow Rd., Long Beach

Sold. Now operating as Shopper's Market.

Name & Address

Comments

La Salle Market
 2093 W. Washington, L.A.
 LaSalle Market
 1914 W. Washington Blvd.,
 L.A.
 La Salle Market
 1900 W. Washington Blvd.,
 L.A.

These three markets are in reality only one, the correct address being 1900 West Washington Blvd., Los Angeles, Calif. The Santa Monica Freeway took out the customers of this store. It is now empty. Also listed on Table B.

Table "A"

Names and Addresses of Independent Grocery Stores in the Los Angeles Metropolitan Area Listed by the Board of Equalization as Closed (Discontinued Without a Successor) During 1960 in Los Angeles and Orange Counties.

Name & Address

Comments

Frank De Leon
 1146 Effie St., Los Angeles
 Frank Pino
 1467 Hooper Ave.,
 Los Angeles

Golden State Freeway through here.

Building does not exist any more. Was a small neighborhood type market and building was demolished and removed for Santa Monica Freeway. No building in its place.

Jacob E. Hill
 4709 Melrose Ave
 Los Angeles
 Alphonse Straub (Straub's
 Grocery)
 2057 Judson, Los Angeles

Small market. Lost lease. Building now occupied by Engineering Company.

This store is closed and has been for some time. It is backed up to the freeway. Very few homes around it.

Courtesy Market
 1908-10 No. Hillhurst Ave.
 Los Angeles
 Michael Poti
 4711 Melrose Ave.
 Los Angeles

Gasoline station bought whole corner and tore down the building.

Retired. Building now occupied by book store. (Was small market).

Name & Address

Comments

Ben's Market
1102-04 So. Lorena St.
Los Angeles
Harry K. Eug
821 W. Third St.
Los Angeles

This market is in operation as R & J Market. Godinez & Rubio, owners.

Empty store. State took over property on Bunker Hill, thereby eliminating its customers.

H. B. Market
2027 So. Hoover Street
Los Angeles
Pilar Duran
3027 Garnet St.
Los Angeles

No such number now. Santa Monica Freeway.

Has been closed for about 2 years. Freeway left store without many homes to draw from. Now being used as a residence.

No such address on West 5th Street. Apt. Bldgs.

Sim's Market
1335 W. Fifth Street
Los Angeles
Antonia's
1146 Effie St.
Los Angeles
Sam's Market
334 W. Venice Boulevard
Los Angeles
Morris' Market
1408 Venice Blvd.
Los Angeles
Charles & Selina Doss
2231 So. Griffith Ave.
Los Angeles

Golden State Freeway through here. Same address as Frank De Leon, above.

Closed account Santa Monica Freeway.

Now Standard Oil Station.

Never a store at this location. It is a very small Hot Dog Stand and has been there for many years.

Owner died. Closed market. Now a TV and Radio Parts Co.

Closed account Hollywood Freeway.

Building torn down for State Building.

J & H Food Market
2366 W. Pico Blvd.
Los Angeles
Mr. R. M. Saches
945 No. Beaudry Ave.
Los Angeles
Emilio Flores
156 So. Main St.
Los Angeles

Name & Address	Comments
Olivas Market 1020 So. Lorena St. Los Angeles	Has been closed for a number of years. Building now empty. Near Freeway. Traffic cannot stop. No houses to draw from. Will build an apartment house on this location.
Allan D. Thompson 4416 W. Pico Blvd. Los Angeles Bill's Market 3735 No. Mission Rd. Los Angeles	No store there for 10 years. Now small TV Shop. Present owner is Joseph Yabarra.
Joe's Market 7276 Melrose Ave. Los Angeles	Very small. Now open as Norm's Screens. Neighbors said it never had a chance to succeed because of size.
Chicago Creamery 2116 Brooklyn Ave. Los Angeles Hernandez Grocery 1529 W. 11th St. Los Angeles	This market still in operation. Also listed under Solomon Chasin on Table B. Store closed a year ago due to death in the family.
Paul's Grocery Store 833 No. Alma, Los Angeles Petri's Market 5422 Alhambra Ave. Los Angeles Mrs. Corine Davis 1561 E. 25th St. Los Angeles	Never was a store here. This is a private home. New owner, Alex and Marion Dmidoff. Same entity listed on Table B. Is a private dwelling now. Was a small Ladies' Dress & Skirt Shop. Never was a market.
Marsh's Market 3201 So. San Pedro St. Los Angeles Lara's Market 7414 Hoover Ave. Los Angeles	Market still open, never closed. Store under name of Leo's Market. Two square blocks of homes taken out for a grammar school, which took the business from this store. Store closed.

Name & Address

Comments

Willard G. Hammack
330 So. Catalina
Redondo Beach

This was a small market which had no potential and couldn't make a go of it, so it closed. Building now occupied by Redondo Marine Boat Sales.

Bertha Mae Bragg
16525 Prairie Ave.
Lawndale

Small store, poorly operated, with very little stock. Building now occupied by a beauty shop.

Frank & Mary Martin
10323 So. Figueroa
Los Angeles

At one time this market did a fair amount of business. The Harbor Freeway took out too many homes and customers, so the store had to close. Now empty.

Leon Scott
1417 E. Brenon Ave.
Los Angeles
Weissman, Cohen Market
1745 E. 41st St.
Los Angeles

Must be incorrect address. Cannot locate.

Aiko Sone
3725 So. Western Ave.
Los Angeles
Harry's Market
4331 Dalton Ave.
Los Angeles

Sold out to Bradstreet Rubber Co., 7816 Emerson St., Los Angeles 45, who bought the entire property. Old frame building is for sale by owner.

Store still in operation. Same owner. Same address.

John's Market
2054 E. 103rd St.
Los Angeles
N. L. Stutts
15827 Hawthorne, Lawndale

Closed approximately 4 years ago due to keen competition of Vernon & Western Market. Building now being used as a church.

Now open as Top's Sea Food & Bar-B-Q.

Store operated very poorly. Very little stock. Building now occupied by upholstery shop.

Name & Address

Comments

Little David Kennedy
11208 Wilmington Ave.
Los Angeles

This market consisted of a very small room. Because of inadequate experience it did not succeed. Now a used furniture and clothing store.

Joe & Rose Fregoso
4181 So. Alameda
Los Angeles

Original owners died and left store to the children. They closed it up because they own another store in Duarte and "didn't need the money." Building now for rent.

Eugene Wade
7410 So. Central Ave.
Los Angeles

This small store was opened as a market, but because it was too small and a very poor location it was not successful and closed. Now the S & J Mkt.

Pic'N Save Food Market
8115-19 Avalon Blvd.
Los Angeles
Leo's Market
2059 Nadeau St.
Los Angeles

Market closed because of a fire and did not reopen. Inside completely burned out. La Fortuna Market now at this location. Joe Lona, owner. New owner says former owner "took too mucha da vino".

Charlie's Market
5511½ So. Figueroa St.
Los Angeles
Hardy & Grace Thomas
642 E. 109th Place.
Los Angeles
B & L Market
11941 Inglewood Blvd.
Hawthorne

Closed July 1959 account Harbor Freeway. Now vacant.

Owner retired. New owner James Colquitt.

There have been 3 different owners at this location in past 2 years. None of them could make a go of it. Boys' Market came in on Hawthorne Blvd. just 2 blocks over from this stop. Store hasn't been any good since. Now liquor store warehouse.

Name & Address

Comments

Simon & Adela Bernstein
4215 So. Alameda St.
Los Angeles
Doug's Food Market
6738 Compton Ave.
Los Angeles

Closed account of death. Husband died and wife is touring the world. Owners of this market moved across the street and opened another market. This address is now Sequoia Mexican Candy.

Roy's Market
5114 Central Ave.
Los Angeles
Jefferson Market
1886 W. Jefferson Blvd.
Los Angeles

Store closed approx. Sept. 1961. Now shoe repair shop.

Anthony & Helen Wright
4208½ So. Broadway
Los Angeles

Closed due to no business. Store operated very sloppily. Monthly receipts probably less than \$2000.

Scott's Market
725 So. Broadway, L.A.
Bob Matsumoto
11105 So. Wilmington Ave.
Los Angeles
Henry McRay & Ceaser Le Flore
6524 So. San Pedro, L.A.

Closed April 1961 due to poor business and lack of operating capital. Baptist Church now there. Now F. W. Woolworth store.

Bob Matsumoto has gone back to Japan. Now known as Chuck's Wholesale Meats. This is the old Friendly Market with different owners and name changed to the above. Still in operation. Also listed on this table as Friendly Grocery.

Ralph Campobasso
8634 So. Main St.
Los Angeles

Poor operation against keen competition and market went bankrupt. Building now used as a 2nd hand store.

Ruby Huey Prince
4821 So. Hooper Ave., L.A.

Was a liquor store. Sold to Mr. Uddles. Probably purchased it for a liquor license. Alba Eng. Inc. bought them out for a parking lot.

Pasto & Carlott Herrera
5555 Bandero St.,
Los Angeles

Name & Address	Comments
Thor's Market 11001 So. Figueroa St., L.A. Eleventh Ave. Market 3301 W. 54th St., Los Angeles	Market still open under name of Borinquen Mkt. When this store closed 5/1/57 it was vacant for several months and a TV and Radio shop moved in 11/1/59.
Mrs. Salvadore Rivera 3819½ So. Vermont Los Angeles Echo Market 642 So. Ramona Ave. Hawthorne	Not a market. Key's Barbeque. Building condemned. Now unoccupied.
Quality Pi-Up Market 4801-03 Avalon, Los Angeles	Closed April 1959. Building now vacant. Store moved across the street (Buddha). The inside of this market burned out, closing the market. Now empty.
Fred's Ranch Market 7400 So. Avalon Los Angeles Flavius & Zora Rowell 5011 So. Western Ave., L.A.	Owner had a stroke and closed October 1959. Restaurant now occupies spot. Store was catering to Spanish people. Not enough in the area. El Indio Mexican Food across the street. Now E.Z. Radio & TV Repair.
Toini La Mont, Maria Rajala 2305 Redondo Beach Blvd. Redondo Beach	This was a small meat market. The owners forced the man out of business when the lease ran out and made the building a Laundermat. The grocery man next door verified this.
Hombres Market 9101 So. Normandie Ave. Los Angeles	Closed February 1962 due to lack of operating capital and lack of business. Thrifty Employment Agency presently occupies this location. This store also listed on Table B.
Lee's Grocery Store 4070 So. San Pedro St. Los Angeles	

Name & Address

Comments

Friendly Grocery
6524 So. San Pedro St.
Los Angeles

Market now open as Henry McRay & Ceaser Le Flore. Also listed on this table under new owners.

Best Way Market
120 So. Eucalyptus
Inglewood
Joe Duchin
10912 Compton
Compton
Magnuson's Food Market
1016 W. Magnolia Blvd.
Burbank

Had a fire. Closed up. Also listed on Table B and as Safeway on this table. Store closed account owner's poor health. Now occupied by second hand store.

Was small neighborhood market, practically a milk and bread stop at best. Freeway took too many houses and traffic, so market closed. Now Comber Motor Parts (automobile accessories).

Harry & Evelyn Steffel
11119 Burbank Blvd.
North Hollywood

Demand for this type grocery store in area very poor. Not enough business. Sold to Italian American Mkt., which also couldn't make ends meet. Location now up for lease.

E & W Market
9407 San Fernando Road
Sun Valley

Market sold to Volks because of death. Market very small with very small inventory. Has never enjoyed good business. Affected by Freeways and lack of parking space.

Ray's Liquor & Grocery
601 Kalisher Street
San Fernando

This market has been closed for 3 years. Lack of business. Freeway and removal of homes as well as approx 20 small grocery stores in a square mile area exaggerated this condition. Now a family dwelling.

Name & Address	Comments
Art's Market 14047 Van Owens, Van Nuys Jimmie & Martha Peterson 4742 Woodman Ave. Sherman Oaks	Market has been closed for 2 years. Now a beer cafe. Freeway cut down traffic and buying public. Stock very limited. Sold out to Italian American which lasted for about 2 years. Now forced to close.
William Drake 20059 Roscoe Blvd. Canoga Park	Formerly Bill's Mkt. Store leased by Drake who sold off all stock at reduced prices approx. 2 yrs. ago, and went to Apple Valley. Bldg. now vacant and for rent.
Jerry Market 16109 Van Owen Van Nuys	Airport took a great portion of homes in area, forcing him to close. Now a Beer Cafe, which is doing good business. Freeway came through and removed homes in this area. No business. Owner died, market closed. Building vacant.
Josefina Villavana 615 San Fernando Mission Blvd. San Fernando	Freeway came through. Store moved to new location and closed shortly after. Building now being used as a church.
Hyde's 8714 Glen Oaks Blvd. Sun Valley	Affected by Freeway. Lack of capital and demand made location poor business risk. Mexican Store still in operation at this address, still known as La Perla.
La Perla Market 1300 Woodsworth St. San Fernando	Market $\frac{1}{4}$ mile off highway on a bad dirt road in a trailer 8' x 20'. Total inventory about \$60. Total daily sales probably \$12 per day. No store or trailer at this location now.
Robert C. Woolfork 3505 W. Avenue F Lancaster	

Name & Address

Comments

Valley Food Service
13735 Victory Blvd.
Van Nuys

Store opened as a discount house. Poor merchandising and poor location, with no demand in area forced closing. Building now used as a storeroom for a liquor and deli store. Person owning property put up a small store on front of lot, which is still in operation as a liquor-deli.

La Scala Bros.
7879 San Fernando Rd.
Sun Valley

Changed ownership several times in last few years. Location of store and no neighborhood demand forced closing. Opening of Golden State Freeway and removal of homes played a major part. Building still vacant. Still operating as a grocery store. Limited stock and poor merchandising.

Qik Market
7601 Vineland Ave.
Sun Valley
Motis Mart
8549 Sepulveda Blvd.
Sepulveda

Closed store because of sickness. No parking area adequate. People drove by market because of traffic condition. Building now an appliance and repair shop. No market here for 2 years. Poor location and insufficient business forced closing. Now a dwelling.

Shady Lane Trailer Court
Grocery, 13890 La Rue St.
San Fernando

Inadequate demand for this Kosher style deli; out of business. Now Gil & Thelma's Restaurant and Commerce Buffeteria Deli.

Phil's Kosher Market
9930 Commerce Ave.
Tujunga

Name & Address

Comments

Tony's Market
1619 Burbank Blvd.
Burbank

Freeway caused removal of homes. Poor market location. Inadequate parking facilities. Bldg. for lease. Same as Cox's below. Also listed on Table B.

Cox's Market
1619 Burbank Blvd.
Burbank

Freeway, removal of homes, poor location, caused closing of market. Bldg. for lease. Same as Tony's above.

Mid Valley Wholesale
Foods, Inc.
14532 Friar, Van Nuys
Sypherd's Grocery
13428 Telegraph Rd.
Santa Fe Springs

Closed about 5 yrs. ago. Now All Star Office Equipment & Furniture in this location.

Very small. Volume approx. \$3 per day. They retired. Now occupied by a 2nd hand store.

Shefferd Johnson
7933 E. 7th St., Downey
La Economia Grocery
10211 E. Whittier Blvd.
Whittier

This is a private residential neighborhood. No store.

Grocery and service station in Mexican neighborhood. Freeway caused people to move. Closed and building has been removed.

Joe & Julia Ramirez
401 So. Rowan Ave.
Los Angeles
Clarence L. Russell
3910 E. Florence Ave.
Bell
Monterey Market
3558 E. 1st St., Los Angeles
Spurlin's Market
7052 E. Compton, Paramount
Joseph Campagna
726 So. Atlantic
Los Angeles

Medina Market. Closed 9/21/62 account Pomona Freeway taking it out.

Small operation. No business from the street so they closed for good. Now a liquor store. Still open. Known as Fruiteria.

Closed. Now a residence.

There was a paint store adjacent to this market which owned the building. They wanted to expand so did not renew the lease.

Name & Address

Comments

Perez Market
349½ Brooklyn Ave.
Los Angeles
Edmond F. Alva
3920 E. Third, Los Angeles
Salvatore Segura
2962 E. Gage
Huntington Park

This store open under name Chelo Market.

Still open. New owners, Ester & Rudolph Tovaz.
Not in business. No further information. Presently Lutheran High School Gift & Thrift Shop.
Presently Jim's Market.

Anthony Lo-Cicero
2806 Bellgrave
Huntington Park
Pasquale & Anna Cutrona
247 So. Painter Ave.
Whittier

Small Italian Deli. Closed approx. 2 yrs. ago. Sales poor. Bldg. now occupied by Design Consultation.

Morrison's Market
358 W. Poplar St., Compton

This was a small neighborhood market owned by an elderly couple who had it torn down and a new home put in its place.

Robert Tate
903 W. Compton Blvd.
Compton
Joseph C. Scott
5840 Main St.
Hollydale

Very small store, about 10' x 20'. Closed account no business. Now a record shop. Has been closed for 2 or 3 years. Was small neighborhood store. Changed owners 5 times. Now a Youth building for Church across the street.

James Labrum
6812 Live Oak St.
Bell Gardens
Mercy Market
420½ No. Poplar Ave.
Montebello
Village Mart
16509 Leffingwell Rd.

Went broke. Neighborhood couldn't support 2 small markets.

Closed in 1960 account no business. Still empty. Approx. business \$400 monthly. Good sized neighborhood market in a growing area.

Name & Address

Comments

Whittier

People say owner was drinking too much, with poor management. Closed approx. 2 years ago. Building now occupied by beer parlor.

C & M Market
2100 Hatchway, Compton
Brac's Market
4214 E. Olympic Blvd.
Los Angeles
Francisco Grenado
446 No. Gage Ave.
Los Angeles
Owen C. Lindner
15037 Alondra Blvd.
La Mirada

This is closed. Now a Church of Christ.

Now in operation under new owner, Mr. Carlin.

Building is gone. Now a service station at this location.

Went broke because of poor operation. It was a new store in a new neighborhood with good potential but he was a butcher and lacked ability to operate a grocery. Store now owned by Bob O'Connor and is prospering nicely.

Family Produce Co.
13027 E. Rosecrans
Norwalk

These people were the 3rd or 4th owners of this produce stand. First owners lost business due to poor merchandise they tried to sell. None of the following owners was able to lure the business back. Building now rented to the B.P.O.E.

Arelio & Maria G. Urangia
921 No. Hazard Ave.
Los Angeles

Very small operation. Has closed and opened numerous times in the past. Now known as La Montana Tortilleria.

Speedee Mart
209 Beverly Blvd.
Montebello

Closed in 1960 account poor business. Building for lease at present. Also listed on Table B twice.

Name & Address

Comments

Speedee Mart
4520 E. Alondra Blvd.
Compton
Star Food Market
3426 Eagle Rock Blvd.
Los Angeles

Market still open. Also listed on Table B.

This market was located on Ave. 34 and Eagle Rock Blvd. about 10 years ago. Colorado Freeway coming through removed houses. Store closed. Then occupied by a Used Furniture store, which has also gone out of business. Building up for lease.

Closed account Freeway.

Len's Market
1901 Glendale Blvd.
Glendale
Bob's Market
521 Museum Dr.
Los Angeles

Has been closed for 2 years. Apts. upstairs have been rented. Downstairs is store room. Paul (owner) runs grocery in Hollywood).

The San Diego Freeway now occupies the entire block.

Joe B. Ramos
1882 Normandie Ave.
Gardena
Garden St. Market
2207 W. Compton Blvd.
Gardena

Store closed 7/15/60 account lack of business. Boys' Market opened down the street. Building owner subdivided it into 3 stores—Bicycle Repairs, Laundry, Barber Shop. Closed because of poor health. Was operated by two women. Presently used as The Long Beach School Employee's Credit Union.

Closed because of poor management. Now a used furniture store.

Market still open and operated as Oliver Street Market.

Dusan's Market
4335 E. 10th
Long Beach

Bay Market
1150 E. 7th St.
Long Beach
Ida M. Brewer
450 Oliver St., San Pedro

Name & Address

Comments

Kinzer's Market
821 Lime Ave., Long Beach

Closed account of death in family. Fixtures still in store but no stock.

Mrs. Emma Brunner
25004 Narbonne Ave.
Lomita

This was a very small grocery store, with no business, so it closed. Is now a small plating shop.

The Corner Store
1123 E. Anaheim
Wilmington

This was a very small market. There was another small market next door. The property and market were purchased and the owners tore the market down.

Juan N. Rubio
1034 E. Pac. Coast Hwy.
Wilmington
Gaffey Public Market
1400 So. Gaffey St.
San Pedro

There is a small store in operation at this location owned by Mr. Sanchez.

Market closed. A large Safeway store opened close by. Location was poor for a grocery store. Now used as a hardware store.

Rancho Market
415 W. 2nd Street
San Pedro

Bldg. vacant for over a year. Neighbors do not know why he closed. Very small store. Has been closed for about 2 years. Now a Gift and Card Shop.

Napoleon Market
214 Atlantic Ave.
Long Beach

Store in operation under new management and new name, Mock's Market.

Slick's Market
540 E. 1st St.
Long Beach

Deceased. Closed. Still vacant.

Alfred & Fred Nieto
1724 Seabright Ave.
Long Beach

Elm Haven Market
18630 So. Figueroa
Gardena

Market still open under same name. Owned by Israel Shanon. Listed 4 times. Twice on this table; once on Table B as Elm Haven and once as Wallenfand and De Vaun.

Name & Address

Comments

Elm Haven Market
18630 So. Figueroa
Gardena

Ideal Pork Shop
655 Pine Ave.
Long Beach

Little Farmers Market
640 E. Carson St.
Torrance

Farm Boy Market
10425 E. Alondra
Bellflower

John L. Grabill
300 E. 2nd St.
Pomona
Frank & Mary Sllmon
285 Martello Ave.
Pasadena

Irvine Dectar
6375 No. Figueroa
Los Angeles

James & Jerrell Smith
1190 So. Main
Pomona

Ted's Triangle Market
5661 Aldama Ave.
Los Angeles

Benner Market
5934 Benner St., Los Angeles
Virginia Inn Market
616 E. Valley Blvd.
El Monte

Closed because of poor management and divorce. Now occupied by Lamp Co. Also listed on Table B.

This is small open produce market which closes every Winter because of the seasonal produce business. Closed now. Also listed on Table B.

Small operation. Poor location. Closed. Now a garage.

Mr. Grabill retired because of old age. Remodelled building and rented to Kalolo Hut. Store has been closed for 2 years due to sickness in family.

There is still an ice cream parlor there.

New sewers were put in. Road was torn up. This cut off access for a prolonged period. Store is now closed and the building was removed.

Now Carl's Triangle Market.

Out of business. Now occupied by an apt. building. Closed 1960 account poor business. Was a small neighborhood market. Building now occupied by a beer parlor.

Name & Address	Comments
Oatley's 261 Linda Rosa Pasadena	Mrs. Oatley closed market due to sickness. Sold to Lucille Hawkinson. Now in operation.
Jung's Food Mart 4203 No. Huntington Dr. Los Angeles	Store was vacant for about 1½ years. Now occupied by M & H Barbosa. Their old location about 5 blocks away was torn down so they moved.
West Woodbury Market 543 W. Woodbury Rd. Altadena	Closed about 1 year ago. Poor health caused owner to close. Very small operation. Building now for sale or lease.
Butler's Pantry 2225 No. Glenrose Ave. Altadena	Changed to Gray's Mkt. until 6 months ago. Now Neighborhood Market, owned by Jim Busey.
Variety Wholesale Food Dist. 9526 E. Las Tunas Dr. Temple City	Closed 1960 because of poor business. A type of co-op store trying to sell customers wholesale on a membership basis. Building now occupied by a beauty salon.
Grindlers Market 5210 York Blvd., Los Angeles Edw. L. Martinez 4414 Huntington Dr. So. L.A.	Store was too much for her. Closed up. This was a meat market and has been out of business for some time. Ill health of owner caused him to cease operations. Now open as Tamales King. Makes and sells Tamales and Mexican Foods. Still in operation.
Handy Market 303 Pasadena Ave. So. Pasadena.	

Name & Address

Comments

G. Atinsky
3212 E. Century Blvd.
Lynwood

No information on this one. There is a Real Estate and Tax office at this location now.

Donald Ellis
14345 E. Garvey
Baldwin Park

San Bernardino Freeway cut off homes from store and the widening of Puente Ave. and new bridge caused store to close.

R & J Market
2545 Rosemead
So. El Monte

Small neighborhood grocery. Closed 3 years ago. Building has had other tenants since of different type. Now empty and for rent. Also listed on Table B.

Vern-O-Kay Grocette
58 E. Holly St.
Pasadena

Closed. This store was hemmed in by commercial and there was no residential trade to draw from. Also listed on Table B.

S. H. Eggleston
11624 Santa Monica Blvd.
W. L.A.

Owner passed away. Store closed.

David Sperling
321 Ocean Front, Venice

Lease expired. Owner retired. Now operated as Pizza & Sandwich Shop.

Abell Foods Inc., 812 So. La Brea Ave., Los Angeles
B & B Stores, 12912 Venice Blvd., Los Angeles

Now operating as Bag & Basket at 817 So. La Brea. Formerly Mar Vista Pizza Cafe. Now Holmquist Sound Co.

Norborhood Grocery
200—30th St.
Newport Beach

Closed. Now a laundry.

The Little Ranch Market
14022 So. Flower
Garden Grove
McCowan Market
1111 So. Bristol, Santa Ana

Not able to locate this spot. Address not correct.

This market open and operated by Mr. McCowan.

Name & Address	Comments
Florence Market 10452 Wintersburg Ave. Santa Ana Palisades Market 2002 S.E. Palisades Rd. Santa Ana	This was a small Spanish store in a home in the farming district. This party sold property for quite a profit, and Oil Company will put gas station on the property.
Knott Avenue Market 6521 Knott Ave., Buena Park	This was an old shack type building. It was destroyed for a new industrial tract.
John Nora Market 326 W. Santa Fe Placentia	A good town store several years ago. Mr. Nora passed away 3 years ago. New operator closed up in 1960 because of poor business. Building now for lease. We do not cover this area.
Cabinland Market 28424 Silverado Road Silverado Canyon Pennywise Market 312 E. Central Ave. La Habra	Closed 1960. Was one of best stores in town several years ago. Lost business because of market centers in suburbs of town. Building now occupied by Pancake House. Taken out for Freeway.
Victor's Super Mart 2561 Sawtelle Blvd. West L.A. Sale's Fulton Market 345 No. Beverly Dr. Beverly Hills	Store closed 10/16/60 by the creditors. Mismanagement. Now occupied by a Hobby Shop.
Gill's Savon Market 3511 Centinella Ave. Los Angeles	Owner closed due to insufficient return on his money. Now occupied by Santa Monica Tool Crib.
Robert L. Miller 461 No. Beverly Drive Beverly Hills	Store closed March 1961 due to insufficient parking space and too high overhead. Presently being occupied by Renoire Beauty Shop.

Table "B"

Names and Addresses of Grocery Stores of Multiple-outlet Concerns in the Los Angeles Metropolitan Area Listed by the Board of Equalization as Having Opened in 1960 and Closed by November 15, 1961, in Los Angeles and Orange Counties.

Name & Address	Comments
Lucky Stores 306 Florence Ave. Los Angeles Shoppers Markets 2750 Pacific Coast Hwy. Torrance	Lucky Stores still own building but are presently leasing it to Better Foods Market . Still in operation.
McDaniel's Markets 1117 W. Manchester Inglewood	Poor location and there have been a chain of unsuccessful attempts to operate it. McDaniels sold to a Japanese couple who also had to close. Now open as Glen Mart .
McDaniel's Markets 126 So. Glendora Blvd. West Covina Yourway Markets 16635 Crenshaw Torrance	Closed. Went bankrupt. Poor management. Building still vacant. Rumor is it may be torn down to put an apartment building in its place.
F & W Markets 1945 E. 4th St., Long Beach Minit Market 26881 Camino De Estaella L. A. County Minit Market 12816 So. Van Ness, Gardena Minit Market 1530 So. Flower St. Santa Ana	Still operating. Present owner: Ben Martin . Now open as Palisades Market . Still operating. Now operated by Holly Foods Market . Presently operating as a Speedee Mart.

Name & Address

Comments

Dearborn Stores
1600 W. 5th Ave., Pomona
Dearborn Stores
6127 Sepulveda Blvd.
Los Angeles

Sold, and now operating as Tru Value Market.

Jim Collins & Mr. Leonard opened this market. When the Freeway took all the trailers out across the street, they leased to Woody Hughes. He operated it as a market, but no business. Now leased to a Catering Co. which supplies Lunch Wagons.

Dearborn Stores
14545 Friar St.
Los Angeles

Purchased by a former Dearborn Store Manager. His reserve capital wasn't great enough to keep the market in operation. Closed about June 15, 1962. Building still vacant and for lease.

Jolly Jim Markets
2420 Santa Fe Ave.
Long Beach
The Buss Boys
3922 Anaheim, Long Beach

Purchased by Shoprite. Has been closed for alterations for some time.

Sold, but could not clear escrow. Store now occupied by The City Carpet Co.

The Buss Boys
2444 E. 4th St., Long Beach
Carl's Ranch Market
1500 W. 6th St., Los Angeles
Sunfair Market, 7822 E. Garvey Blvd., So. San Gabriel
La Salle Market
2093 W. Washington Blvd.
Los Angeles

Now being operated as Bradley's Market.

Still operating.

Now a Shopper's Market.

McCoy's Market, 5425 Long Beach Blvd., Long Beach

1900 W. Washington Blvd. is correct address for this market. Closed by Santa Monica Freeway. Listed on Table A three times.

This was a Safeway Market about a year ago. Now McCoy's Market.

Name & Address

Comments

Yor Neighbors Market
5519 Cherry Ave.
Long Beach

Sold to a new owner and now being operated as Wright's Market.

Chatsworth Market
10249 Topanga Canyon Blvd.
Chatsworth

This market was purchased by Mr. Horace Lyons. Market was successful operation but the location was more valuable as a service station. Gas station erected there in June 1962.

Chatsworth Market
21213 Devonshire St.
Chatsworth

Market still operating. Store very small.

Pennywise Market
427 So. Holt
El Monte

Closed 1961 account disagreement between partners. Opened 1962 by Larry Drum under name of Key Fair.

Farmer Boys
203 No. Harbor Ave.
Los Angeles

This address is actually San Pedro, not Los Angeles. Market changed hands. Now operated as San Pedro Farms. This store on North Garfield in Monterey Park. Now open as Dennis Market.

Bradbury Grocery
Los Angeles County

Liquor store now in operation at this address.

Tobias Tuchmayer & Alex Schwartz, 2112 So. La Brea Ave., Los Angeles
Story & Miller Co.
18121 Saticoy St.
Los Angeles

Market sold to Mr. Bob Harrison, but was repossessed by original owners. Now being operated by one of the owners, Lou Miller.

Sureway Markets
2461 W. Washington Blvd.
Los Angeles

Closed account Santa Monica Freeway. Auction House now occupies premises.

Table "B"

Names and Addresses of Independent Grocery Stores in the Los Angeles Metropolitan Area Listed by the Board of Equalization as Having Opened in 1960 and Closed by November 15, 1961, in Los Angeles and Orange Counties.

Name & Address	Comments
Hollywood Food Town, Inc. 6630-34 Hollywood Blvd. Los Angeles	Money stolen by partner. Had to close. Reopened 7/11/62 as Hollywood Food Town.
Beef's Chuck 4926-30 Hollywood Blvd. Los Angeles Blue Goose, 1528 Sunset Blvd., Los Angeles	Still doing business in same place, but has changed hands. This is a restaurant. Still in business.
Hernandez Grocery 1529 W. 11th St., Los Angeles	Store closed 1 year ago, due to death in family.
Petri's Market 5422 Alhambra Ave. Los Angeles Mr. Solomon Chasin 2116 Brooklyn Ave. Los Angeles	Still in operation but under new owner. Also listed on Table A. Now called Chicago Creamery, but looks like it does very little business. Also listed as Chicago Creamery on Table A.
Food Spot Market 9315 So. Avalon Blvd. Los Angeles	Change of ownership to John & Mona Soo Hoo who took over from former owner about 6/19/61. Former owner forced to quit because of heart trouble.
Mr. Bartolome Merced 10956 So. Main St. Los Angeles	Was occupied by Rosario Market, who went broke 3/1/62. This location is 1 block from new ABC. Now occupied by a carpet and drape shop.

Name & Address

Comments

Ernest Newson
5043 So. Normandie
Los Angeles
Lee's Grocery Store
4070 So. San Pedro St.
Los Angeles

This store was never closed. Now operating under name of Quality Market #2. Closed February 1962 due to lack of operating capital and lack of business. Thrifty Employment Agency now occupies this location. Also listed on Table A.

Bestway Market
120 So. Eucalyptus St.
Inglewood

Closed due to fire. This location is an ex-Safeway store. Building partially destroyed now. Also listed on Table A twice.

Leonard Cohen
823 Garnet St.
Redondo Beach
Tenerelli's Italian Food Market

Still in operation as Bob's Market.

308 Avenue I
Redondo Beach
Snappy Food Mart
4172 W. Imperial Hwy
Inglewood
Simmons Market
101 So. Broadway, Redondo Beach

Still in operation.

Dave's Market
4610 So. Avalon
Los Angeles

This store still operating at this location. Does a very good business. Still in operation as Martinez Market.

Tony's Market
1619 Burbank Blvd.
Burbank

Was Dave's about 6 years ago. Last time it was in operation went by the name of Young's Market which closed December 1961. Building vacant.

Freeway caused removal of homes. Poor market location. Inadequate parking. Bldg. closed and for lease. Also listed on Table A, once as Tony's, once as Cox's.

Name & Address

Comments

Grant & Son
(Mr. Robert Grant)
13069 Van Nuys Blvd.
Pacoima

Freeways in area removed most traffic from streets. Store too small and no merchandise. Closed. Building now a 2nd hand store and pawn shop.

Mr. Harry Woods
11940 Ventura Blvd.
Studio City

Correct address is 12043 Ventura Blvd. Closed about 5 years ago. Market unable to grow because of poor location. Freeway took most traffic off Ventura Blvd. Bicycle shop in location now.

Speedee Mart
208 Beverly Blvd.
Montebello

Closed 1961. Court case still pending. 2 different owners. Now empty. Listed twice on this table and once on Table A.

Mr. Anthony Valdez
373 W. Compton Blvd.
Compton

This market still in operation under new owners as meat market and grocery store.

Hastings' Market
6836 E. Motz, Paramount
Speedee Mart #304
4520 E. Alondra Blvd.
Compton

Closed about December 1960. Has never been reopened. Still operating under new management. Also listed on Table A.

Mac's Market
5559 So. Atlantic Blvd.
Maywood

Still operating as Mac's Market.

Arnold's Market
1900 E. 19th St., Compton

This market was closed for a short time and then reopened as Frisco's Market.

Speedee Mart #305
12142 Downey Ave., Downey
Speedee Mart #301
209 E. Beverly Blvd.
Montebello

Still open and operating at this address. Doing well.

Closed 1960 account poor business. Building now for lease. Also listed on Table A and again on this table.

Name & Address

Comments

Bull's Market
1545 Wilmington Blvd.
Wilmington
Elm Haven Market
18630 So. Figueroa
Gardena

Now Miller's Market and still operating.

This market now operating; owner Israel Shahon. Listed 4 times. Twice on Table A as Elm Haven and again on this table as Wallenfand & De Vaun.

Ideal Pork Shop
655 Pine Ave., Long Beach

Lost store because of divorce. Now occupied by Lamp Co. Also listed on Table A.

Little Farmers Market
640 E. Carson St.
Torrance

Not a grocery store but a produce stand. San Diego Freeway took it out of business. Also listed on Table A. Speedee Mart operated this store until about July 1, 1962. Building now empty and for lease.

Mr. Ralph M. White
3961 W. 174th St.
Torrance

Very small operation. Poor location. Reopened by Mr. Lee as Lee's Market, but he also had to close.

Parkwood Market
17101 Woodruff Ave.
Bellflower

James Gunn is now manager of McCoy's Market, Lynwood. He walked out of market at this location, which was known as Speedee Mart #307 account of loss.

Mr. James E. Gunn
747 W. Willow St.
Long Beach

First owner of this market. Now open as Speedee Mart #302.

Mr. Edward M. Smith
5115 E. Willow St.,
Long Beach

Name & Address

Comments

Norman Wallenfand & Robert De Vaun, 18630 So. Figueroa Gardena

These men operated this market as the Elm Haven Mkt. two years ago. They closed without notice, leaving several bills. Market now open and operated by Israel A. Shahan as Elm Haven Mkt. Listed twice on Table A and once on this table as Elm Haven.

Food Market Company
12816 So. Van Ness Ave.
Gardena

This market still open and now called Holly Foods Market.

Handy Market
303 Pasadena Ave.
So. Pasadena
Mr. Finis C. Myers
303 No. First Ave.
Arcadia

Still in operation.

R & J Market
2545 Rosemead
So. El Monte

Market now in operation by Mr. Sakatone. Has had 2 operators since Mr. Myers sold.

Has been closed for approximately 3 years. Bad location for small market. Also listed on Table B.

Vern-O-Kay Grocette
58 E. Holly St.
Pasadena

Closed. This store hemmed in by commercial and there was no residential trade to draw from. Also listed on Table B.

Mr. Anthony G. Donato
20 W. Valley Blvd.
Alhambra
The Viking Shop
1610 Montana Ave.
Santa Monica

Closed for 2 years. Was small confectionery. Still empty.

This was at one time a liquor store, never a grocery store. The liquor store moved to a better location. Building presently occupied by the Montana Florists.

Name & Address	Comments
Mr. James I. Yamamoto Sr. 1800 Sawtelle Blvd.	Sold to Lucky Market. Now operating.
Los Angeles Charles & Irene Uller 7461 La Palma Buena Park	This is a Speedee Mart operation and still open.
Mr. John T. Maxwell 1310 Nicholas St., Fullerton Carl & Mary K. J. Ellin 12562 Garden Grove Blvd.	This is a Speedee Mart and doing well.
Garden Grove Mr. Rayford L. Jones 10541 Bolsa Ave. Garden Grove	This is a Speedee Mart operation, open now with new people.
John & Sarah Stevens 801 So. Euclid Anaheim	Now a Speedee Mart operation. Still open under new people.
Jack H. Roop 2437 Ball Road, Anaheim Kenneth Roundy 536 So. La Brea Blvd.	Speedee Mart operation. Open and operating under new people.
Brea	Speedee Mart operation. Operating under new people.
In and Out Market 4622 W. Bolsa Ave. Santa Ana	Was opened as one of the Speedee Mart franchise chain. Had 2 operators but had to close because of poor business. Building now occupied by beer parlor.
	This market presently being operated as J & M Market.

In addition to the foregoing, I would like to make some further remarks concerning the retail grocery business in Los Angeles. I have been intimately familiar with that business for the past 35 years. I have seen grocery concerns fail, and I have seen others succeed. I have personally witnessed the changes in grocery retailing which have occurred during those years.

Twenty or thirty years ago, the grocery business was conducted almost exclusively from small stores. In most cases, the grocery concession was run by one man, the meat concession by another, the produce concession by a third,

and so on. After World War II, however, an innovation in food retailing hit Los Angeles—the supermarket. These stores were much larger and newer than the small corner grocery store. They often times were able to serve as many people as two or three of the older, smaller type stores, and they became immensely popular. Since the War, almost all of the new stores built have been of the supermarket variety. Small stores have been closed to make way for new supermarkets. Because of their larger size, a few supermarkets may adequately serve a community previously served by a number of smaller stores. Safeway, for example, has had a program under way for some time now designed to eliminate its smaller stores and replace them with fewer, but larger supermarkets (see, for example, Table A, *supra*).

I have been advised by Von's attorneys that other statistics developed by the Board of Equalization show a decline in the number of stores being operated in Los Angeles and Orange Counties since 1948. It may be that there are fewer stores today than in 1948 (although I have my doubts concerning the accuracy of the Board of Equalization's figures in view of our findings as set forth above). I am also sure that this decline, if it exists, is attributable in large measure to the popularity of the supermarket.

There have been other changes in grocery retailing over the years. For example, it used to be that the small corner grocery store had to meet only the competition posed by other small corner grocery stores within a radius of a few blocks. Most of the grocer's customers could walk to his store from their homes. This is not so today. First of all, people are more mobile. They travel in automobiles to do their shopping. They will go further to shop than before. They want to go to a store which provides such advantages as adequate parking facilities. Thus, today, any grocer must meet the competition posed by stores as far as 2 miles from his, and he must meet that competition on all levels, not only in terms of the quality and price of his products, but also in terms of convenience, accessibility and the other intangible inducements which are demanded by the public.

Moreover, today's groceryman must deal with competition from outlets which did not concern him at all 20 years ago. Today, grocery products are sold in discount houses,

drug stores and liquor stores. For example, it has been Langendorf's experience that in recent years, we have sold more bread through certain large liquor stores than we have in some supermarkets.

Therefore, it is obvious to me that grocery retailing is much more complex and many-sided than ever before. Competition is and always has been vigorous. It is becoming more so as the passage of time brings change, not only in the geographic area of competition faced by any store, but in the form, content and character of competition as well. There may be fewer stores today than in the past, but I seriously doubt that any retailer could say that he faces less competition today than in former years.

It is equally obvious to me that in a business as competitive as grocery retailing, a grocer to succeed must perceive and adapt to these changes which occur in competition. If he does not, he will fail. In order to succeed, he must be experienced and able, and he must move forward with the times in order to take full advantage of his opportunities. However, the grocery business has not always attracted only experienced and able men. Many find it easy to open up a small store since there are few businesses today which require a lesser initial capital outlay. But those who do open a store are not always sufficiently equipped to meet the demands of competition. Hence, business failure is not uncommon. It has taken its toll not only in the case of small chains and single stores but in the case of comparatively large chains as well.

I do not believe that these instances of failure can be attributed to any competitive advantage held by larger chains over smaller concerns. Anyone who reached a contrary conclusion would, in my opinion, have to overlook the plain fact that there are today and always have been successful grocers with one, two or three stores. Many of today's chains had their beginnings with one store. Examples are Von's, Shopping Bag, Market Basket, Shoppers, Pantry, Michaels, and many others. Other grocers have made good money with one or two stores and have not chosen to expand. They compete quite successfully with chain stores in the communities where their outlets are located. These people were not just lucky, any more than those who have failed were just unlucky. The grocers who

have succeeded did so because of hard work, careful planning, ability and experience. The fact that they were and are successful is proof of the ability of smaller concerns to compete with larger chains. I know it can be done because I have seen it done so often.

Under these circumstances, I certainly cannot foresee that this market will become dominated by a few large chains. On the contrary, I believe competition will become more vigorous and less concentrated. Certainly, I do not see how the merger of Von's and Shopping Bag could in any way lessen competitive vigor or lead to domination of the grocery business by large concerns.

Edward F. Pasini.

Subscribed and sworn to before me, this 18th day of December, 1962.

Georgia V. McLeod, Notary Public in and for said County and State, [Seal.]

My Commission Expires September 21, 1964.

AFFIDAVIT OF CAMPBELL STEWART

STATE OF CALIFORNIA,
County of Los Angeles, ss:

CAMPBELL STEWART, being first duly sworn, does hereby depose and state as follows:

From 1927 until 1945, I operated retail grocery stores in various locations in Los Angeles County. Also, for a number of years prior to 1945, I served on the Board of Directors of Certified Grocers of California, Ltd. In 1945, I was elected General Manager and Vice President of Certified, and in 1955, I became that organization's President, a position I held until my retirement in 1961. Since that time, I have been retained as a consultant by Certified and have devoted a good portion of my time to that organization's business affairs.

Certified had its beginning in 1922 when 15 grocery retailers, who operated one or two stores each in Los Angeles,

met at the Hotel Green in Pasadena. The problem they faced was this—they could not effectively compete against many of the chains then doing business in Los Angeles because those chains could purchase groceries directly from suppliers in large quantities, while the small retailer had to purchase his groceries at higher prices from independent wholesalers. As a result, chain store retail prices were sometimes lower than the prices for which a small retailer could purchase groceries from his wholesaler.

These small retailers decided to try something new. They agreed to pool their resources in order to buy jointly through one common headquarters warehouse. They were thus able to purchase directly from manufacturers and other original sources of supply in sufficiently large quantities, so that they could obtain quantity discounts. In addition, a central warehouse would permit reduction of operating costs.

This was the beginning of cooperative buying in the Los Angeles area. The experiment proved to be successful, and in 1924, Certified Grocers of California, Ltd. was incorporated. All of the stock in that corporation has been and is held by retailers who purchase from Certified, and Certified sells only to its retailer-owners (called members).

Today, Certified is the largest retailer-owned food wholesaler in the United States. Its membership consists of 873 retail grocery concerns operating approximately 1,557 retail stores. In addition, Certified's wholly owned subsidiary, Spartan Grocers (also a retailer-owned cooperative), has 1,200 members who operate 1,255 stores. Most of the members of these cooperatives do business in Los Angeles and Orange Counties, although Certified also serves some members in other parts of the Southern California trading area and in parts of Arizona, Nevada and elsewhere. The members of Certified and Spartan do a retail business estimated at \$1.9 billion a year. According to the Federal Trade Commission, in 1958, Certified's member sales were greater than those of any grocery chain in America, with the exception of A & P, Safeway and Kroger Co.

Here are some additional facts about Certified:

1. Certified sells more than 13,000 items to its members, consisting of dry groceries, frozen foods, delicatessen prod-

ucts and certain non-food products such as health and beauty aids, housewares and appliances. Our members usually can purchase these products at the lowest possible price and as cheaply as any chain. As evidence of this fact, Certified is now supplying many of the area's discount food outlets—establishments which exist because they believe they can undersell the chains. Additionally, several chains who presumably could operate their own warehouses find it more advantageous to buy from Certified.

2. Certified has its main offices and warehouse at 2601 South Eastern Avenue, Los Angeles, on a 30 acre site. The warehouse at that location has 535,280 square feet of storage space, and in addition, Certified owns and operates another warehouse in the San Fernando Valley, which is approximately half as large as the main warehouse on Eastern Avenue. In addition, Certified has a coffee processing plant, a bean packaging plant and a frozen food warehouse. Certified's transportation fleet, which has approximately 340 tractors and trailers, travels more than 2½ million miles a year delivering merchandise to Certified's member stores.

3. While Certified deals primarily in branded items, it also has certain products available under its own private label—Springfield.

4. Certified has been a pioneer in the distribution of many new food items including frozen foods. Certified was instrumental in developing an economical method of distribution that helped cut frozen food handling costs to a point where any merchant could afford to carry this now important type of merchandise.

5. Certified employs seven trained men on a full-time basis who travel more than 10,000 miles a year to assist Certified's members in any way possible with grand openings, special promotions, store layouts, new store site selection, advertising and accounting problems. In addition, Certified's advertising department keeps members advised of advertising and promotional allowances offered by suppliers to Certified and its members. In addition, the advertising department is always available to assist members with advertising mats and layouts or display materials.

I am convinced that Certified has done far more than

just allow independent grocers to stay in business. On the contrary, Certified has contributed significantly to making independents in the Los Angeles metropolitan area potent competitive factors having most of the advantages which flow from size without sacrificing the advantages which come from the independent operation of a small business. As members of Certified, the independent can usually buy as cheaply as a chain, and he can receive assistance in merchandising, advertising and promotional techniques which would otherwise not be available to him. As a small merchant, he can control costs more closely than can the chain, he can become an active member of his community and give his customers the personal touch which wins so many of them away from the chain store. He can move more quickly to meet local competition or take advantage of local conditions, while the nearby chain store must often await orders from its central headquarters.

In proof of my opinion in this respect, I need only to point to the success of many able and aggressive independents. There are countless independents who day after day compete successfully and in many cases out-compete their chain rivals. Year after year, I see independents increase their business and build new stores. Most of the leading chains in Los Angeles began as independents with only one store and a Certified membership. Von's and Shopping Bag are two good examples of the success story of Certified independents who started with one store and grew from there.

Naturally, I also recognize that some independents have failed. So have some chains. The failure of a few is inevitable in any business where margins are as thin and competition as keen as in the retail grocery business in Los Angeles. But these failures should not be over-emphasized. It is my belief that failure is the exception and success the rule. I base this belief on my own observations and on this undeniable fact—Certified could not have grown and succeeded as it has unless its members, its only source of business, had likewise grown and succeeded. The record in this respect is clear. In 1948, Certified's wholesale sales reached a then all-time high of \$87 million. By 1954, wholesale sales had increased to \$198 million a year. By 1958, annual sales had reached \$339 million, and by 1962, they

were \$345 million. This represents an increase of nearly 400% in 14 years.

Obviously, I am directly concerned with any development in food retailing which affects small grocery retailers, since they always have been and still are the primary source of Certified's business. If small concerns are hurt, so is Certified. If they are placed at a competitive disadvantage, Certified would be adversely affected. It is with this thought in mind that I have considered the effect of the Von's-Shopping Bag merger. In my opinion, that merger has not and will not lessen the keen and intense competition which characterizes the Los Angeles grocery business. It will not lead to dominance of the market by one or more chains, and it will not adversely affect the independent's competitive opportunities. In my opinion, the individual store operator is in an excellent position to make a success of food retailing, and there is no question in my mind whatever that the able and aggressive independent can continue to prosper. The merger of Von's and Shopping Bag cannot affect that prospect, in my judgment. So far as I can see, an independent would have no greater difficulty competing with a nearby Von's or Shopping Bag store now than it had competing with that same store prior to the merger.

A charge that this merger may substantially lessen competition or tend to create a monopoly is, in my opinion, wholly refuted by even a casual glance at the past history of food retailing in Los Angeles, and with the continued existence of Certified and Spartan, I am confident that independents and small chains will continue to grow and prosper and that the Los Angeles grocery business will not be dominated by a few large concerns.

Campbell Stewart

Subscribed and Sworn to before me, this 20th day of December, 1962.

C. Maxine Gwaltney, Notary Public in and for said County and State, [Seal.]

My Commission Expires Oct. 8, 1966.

SUPPLEMENTAL AFFIDAVIT OF THOMAS H. LINDEN, SR.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

THOMAS H. LINDEN, SR., being duly sworn, does hereby depose and state as follows:

On January 5, 1962, I signed an affidavit in the above action in my capacity as President of Marketing Services Corporation. The following is a supplement thereto:

The price book published by Marketing Services Corporation reflects prices on approximately 3000 grocery products. The average supermarket carries approximately 7000 products.

Information set forth in the price book is determined by checking shelf prices at one of the stores operated by each of the chains whose prices are listed in the book. Such checks are made approximately once each week.

The price book is a useful guide to those interested in the range of prices being charged by various chains, but it does not purport to nor can it reflect actual prices being charged by the chains surveyed on all items at any given point in time for the following reasons: '

(1) Prices change almost daily in the grocery business in Los Angeles and no survey can hope to record every change made;

(2) Not all prices of all chains are checked on the same day. For example, we may check Ralphs' prices on Tuesday and Safeway's prices on Thursday. Assume that both chains were selling a particular item for the same price on Tuesday. On Wednesday, each reduced its price on that item by one cent and again were selling the item at the same but a lower price. Our survey and price book, however, would show Ralphs' Tuesday price and Safeway's Thursday price and would hence show a price variation between the two of one cent, though, in fact, both chains were selling the item in question at the same price;

(3) The prices listed in our price book are retained from week to week without change unless a change is

found and noted by one of our checkers. Such changes are not always found because:

(a) When an item does not appear on the shelves of the store checked, it is not known whether the item has been discontinued or the store has merely sold all its existing supply;

(b) Our survey reflects only ordinary shelf prices and does not purport to record prices on items which are "on special" or as to which there is a temporary price reduction for any other reason. It is not always possible, however, to distinguish between "specials" and actual reductions in shelf price; and

(c) In checking 15,000 items a week, there are bound to be some errors made.

(4) There is necessarily a time lag of from four to seven days or in some cases longer between the day on which any given price change is made and the day on which our subscribers learn of the change. It takes at least that long for our checker to learn of the change, for the change to be made in the price book, and for the book to be printed, mailed and received.

Marketing Services Corporation's principal competitor is a firm which publishes a price book known as Grocer's Weekly Guide. To my knowledge, that price book—which has been published for at least the past seven years—has never reported Shopping Bag's prices. It has listed the prices of a number of other chains in the Los Angeles area.

In addition to the foregoing, I have the following observations to make based upon my 30 years' experience in the retail grocery business in Los Angeles:

(1) Price is not the most important factor in competition. Of equal importance is convenience, courtesy, the availability of near-by parking, shelf display, store layout, variety of products sold, advertising, quality of products, length of check out lines, general store atmosphere, special services and the like;

(2) By far the most important and influential factor in the determination of grocery store prices in the Los Angeles area at the present time is the emergence,

growth and activity of discount houses which sell food. All recent price reductions on grocery items can be attributed to mounting concern on the part of grocery retailers over the necessity to meet or at least approach discount house prices;

(3) The price book published by Marketing Services Corporation is sold primarily to retailers who operate one, two or three stores—the so-called independents. My experience with independent grocers is that they can and do compete effectively and profitably against the larger chains. Chains have advantages in some ways over independents, but by the same token independents have some advantages over chains. Often, the independents' costs of operation are lower. They can more easily adapt to local competitive conditions. They can act quickly where the chain store must await orders from the home office. They can render more courteous, friendly and efficient service. By reason of affiliation with cooperatives such as Certified Grocers, they can buy groceries as cheaply as the chains and can profitably sell them for the same prices as charged by the chains. Naturally, some independents do not do well. Some fail. But, usually, those who fail are inefficient or inexperienced. Too many independents have prospered to conclude that independents are at a competitive disadvantage; and

(4) The merger of Von's and Shopping Bag has not lessened competition in the retail sale of groceries in Los Angeles. Competition was intense and vigorous before the merger; it continues to be. I have noticed no change in competition as a result of the merger, nor do I know of any independent or chain which has suffered because of it.

Thomas H. Linden, Sr.

Subscribed and sworn to before me this 5th day of Febr., 1962.

Robert G. Powell, Notary Public in and for said County and State, [Seal.]

My Commission Expires August 1, 1965.

AFFIDAVIT OF M. W. ENGLEMAN

STATE OF CALIFORNIA,

County of Los Angeles, ss:

M. W. ENGLEMAN, being first duly sworn, does hereby depose and state as follows:

I am the manager of the Adjustment Bureau of the Credit Managers Association of Southern California, a concern engaged in the business of representing creditors in connection with bankruptcies, assignments for benefit of creditors and otherwise. I am also a member of the California Bar.

On March 17, 1961, Yor-Way Markets, Inc. and its wholly owned subsidiary, C. S. Smith Metropolitan Markets, Inc., executed a general assignment for benefit of creditors to me as assignee. Thereafter, and until December 6, 1962, I was personally engaged, along with other representatives of the Credit Managers Association, in winding up the affairs of Yor-Way and C. S. Smith Metropolitan Markets. Our duties included negotiating for the sale of the assignors' markets, or if a sale of the market was not possible, a sale of the merchandise and fixtures contained therein. The Credit Managers Association also operated those markets until a satisfactory sale could be made or the decision was made to close them.

At the time of the assignment for benefit of creditors, Yor-Way was operating 12 stores and C. S. Smith was operating 5 stores, all of which were located in Los Angeles and Orange Counties. Both companies were under a single management.

The records of the Credit Managers Association show that the following 9 Yor-Way or C. S. Smith stores were sold as going concerns by the Association to the following named persons or firms on the following dates:

Store Address	Purchaser	Date of Purchase
9434 Venice Blvd., Los Angeles	Balian's Markets, Inc.	4/26/61
2990 Santa Fe, Long Beach	Myer Wolfson	5/16/61
101 Azusa Avenue, Azusa	Fry Bros.	4/26/61
1803 Huntington Dr., Duarte	Morris L. Goren	3/31/61
5311 Santa Monica Blvd., Los Angeles	Supreme Foods Co.	3/30/61
290 Harbor Dr., Redondo Beach	Mayfaur Markets	4/12/61
10237 Rosecrans, Bellflower	Your Market	4/25/61
401 S. Alameda, Compton	Mednick Bros.	4/18/61
1451 W. Washington, Los Angeles	Myer Stepnick	5/ 4/61

The remaining 8 Yor-Way and C. S. Smith stores were closed after the assignments for benefit of creditors, and the merchandise, fixtures and other assets therein disposed of in liquidation sales.

In March, 1961, Fox Markets filed a Chapter XI petition in bankruptcy. A substantial number of Fox's creditors filed their proofs of claim through the Credit Managers Association. I know from my own personal knowledge that Fox's receiver in bankruptcy has sold a number of Fox's markets to other grocery concerns.

The Credit Managers Association in August, 1961, was also the assignee for benefit of creditors of McDaniels Markets. Prior to the assignment, McDaniels had sold a number of its stores to other grocery concerns, and at the time of the assignment, it was operating 10 grocery stores in Los Angeles, Orange and San Bernardino Counties. Nine of these stores were sold to Food Giant. The remaining store was closed and its inventory and fixtures sold.

In the course of my duties on behalf of the creditors of the chains mentioned above, I have learned a good deal about their operations and the reasons for their failure. Based upon this information and my own experience, I am of the view that over-expansion, under-capitalization, the selection of poor locations at high rentals and, in some instances, inadequate managerial and fiscal controls, led to the Yor-Way, C. S. Smith, Fox and McDaniel's failures. In my opinion, the merger of Von's and Shopping Bag in no way contributed to or had anything at all to do with the failure of those concerns.

M. W. Engleman.

Subscribed and sworn to before me, this 14th day of February, 1963.

Edward P. Renzi, Notary Public in and for said County and State, [Seal.]

My Commission Expires July 20, 1966.

AFFIDAVIT OF CLIVE W. JOHNSON

STATE OF CALIFORNIA,
County of Los Angeles, ss:

CLIVE W. JOHNSON, being first duly sworn, does hereby depose and state as follows:

I am an attorney for Mayfair Markets, a chain of retail grocery stores located in California, Oregon, Utah, Idaho, Arizona and Nevada. I am also a member of the Board of Directors of Mayfair Markets.

I have been advised that Government counsel in *United States of America versus Von's Grocery Co.* have procured the affidavit of Dr. Willard F. Mueller, who has compiled a list of acquisitions of stores made by 9 retail grocery chains in the Los Angeles Metropolitan area between 1948 and 1958. Among them is Mayfair which, according to Dr. Mueller, acquired 18 stores in that period. Apparently, this evidence will be offered in an attempt to show an increase in concentration in grocery retailing in Los Angeles and Orange Counties.

In so far as Mayfair is concerned, Dr. Mueller's statistics show an incomplete picture. While Mayfair acquired 18 stores between 1948 and 1958, it sold 35 stores in Los Angeles and Orange Counties to other concerns during the same period of time, leaving a net loss from acquisitions and sales of 17 stores. Moreover, from 1959 to 1962, Mayfair sold an additional 11 markets, meaning that from 1948 to 1962, Mayfair sold a total of 46 stores to other concerns. The following table lists those 46 stores by county and shows their addresses, the Mayfair number each such store was assigned, and the year in which each was sold.

Los Angeles County—Total 36

Address	Mayfair No.	Year of Sale
92nd St. & Western Ave., Los Angeles	34	1948
11919 S. Central Ave., Los Angeles	35	1948
3138-48 W. Pico Blvd., Los Angeles	38	1948
1900 W. Washington Blvd., Los Angeles	39	1948
1712 W. Temple St., Los Angeles	40	1948
156th St. & Crenshaw, Gardena	46	1948
5820 Bellflower Blvd., Bellflower	48	1948
12010 S. Garfield, South Gate	49	1948

Address	Mayfair No.	Year of Sale
Third St. & Fairfax, Los Angeles	8	1949
211 10th St., Lancaster	29	1949
409-17 Valley Blvd., Alhambra	41	1949
7 W. Huntington Dr., Arcadia	45	1949
100 N. Garfield, Alhambra	60	1949
1830 So. San Gabriel Blvd., San Gabriel	61	1949
12210 Venice Blvd., Mar Vista	64	1949
140 W. Foothill Blvd., Monrovia	69	1949
Hollywood Way & Verdugo, Burbank	81	1949
2207 W. Florence Ave., Los Angeles	4	1951
317 S. Broadway, Los Angeles	6	1952
6422 N. Sepulveda, Van Nuys	68	1952
2990 Santa Fe Ave., Long Beach	47	1953
9434 Venice Blvd., Culver City	66	1953
130 N. Glendale Blvd., Glendale	67	1953
4411 W. Slauson, Los Angeles	7	1954
18623 Ventura Blvd., Tarsana	28	1954
5767 White Oak Ave., Encino	2	1956
520 W. Willow, Long Beach	12	1956
1320 San Fernando Rd., San Fernando	48	1956
4831 Whittier Blvd., Los Angeles	1	1957
10147 San Fernando Rd., Pacoima	36	1957
8725 W. Broadway, Los Angeles	5	1959
2225 W. Whittier Blvd., Whittier	57	1959
18345 Van Owen St., Reseda	22	1960
2309 E. Pacific Coast Hwy., Signal Hill	58	1961
4700 Los Coyotes Diagonal, Long Beach	5	1962
11758 E. South St., Artesia	53	1962
Orange County—Total 10		
520 N. Spadra, Fullerton	33	1948
240 S. Coast Blvd., Laguna Beach	14	1949
1919 S. Main St., Santa Ana	37	1950
134 W. Commonwealth, Fullerton	56	1957
906 E. Center, Anaheim	73	1958
1812 S. Main St., Santa Ana	27	1961
2030 W. First St., Santa Ana	50	1961
10700 E. Garden Grove, Garden Grove	51	1961
330 S. Main St., Orange	59	1962
6672 Westminister, Westminister	75	1962

Clive W. Johnson.

Subscribed and sworn to before me, this 18th day of January, 1963.

Ethel Ringe, Notary Public in and for said County and State, [Seal.]

My Commission Expires February 13, 1963.

AFFIDAVIT OF HOWARD KRUGER

STATE OF ARIZONA,
County of Maricopa, ss:

HOWARD KRUGER, being first duly sworn, does hereby depose and state as follows:

From 1946 to October, 1962, when I retired due to poor health, I was employed by the Kroger Co., the nation's third largest retail grocery chain. My duties for Kroger up to 1961 centered around problems and research in grocery merchandising. I have been called upon many times by Kroger Co. to analyze the performance of retail stores and to evaluate the competition faced by various stores.

In August, 1957, I was assigned the task of making a survey and report concerning three grocery chains in Los Angeles. Kroger was then considering acquiring one of them, if possible, in order to enter the Los Angeles market. Those three chains were Von's, Shopping Bag and Alexander's. Together with Harris Lawless, of Kroger's property division, I conducted interviews of a number of persons who were acquainted with the retail grocery business in Los Angeles and obtained statistical data from various sources, including newspapers.

Then Mr. Lawless and I visited the stores of the three chains being studied. We went inside each store to gain an impression of its size, age, sales layout and the like. We then traveled by automobile around the vicinity of each store to observe stores of competitors in the area. In some instances, we went inside competing stores to look at them.

I wrote a report to my supervisors setting forth my observations and the facts I had learned during this survey. A copy of that report is Exhibit AF.

My conclusions, based upon this survey, include the following:

1. There was very little, if any, competition between Von's and Shopping Bag in 1957 when my survey was conducted.

2. The only area in which I found any indication of competition between the two concerns was Whittier. However,

competitive stores in the same area were being operated by Alpha Beta and Market Basket.

3. In most of the areas I visited, I found that the stores of Von's and Shopping Bag faced competition from nearby stores operated by other chains and independents.

4. It was quite obvious that competition in the Los Angeles metropolitan area was intense and vigorous, and that no chain or group of chains dominated the market.

Howard Kruger.

Subscribed and sworn to before me this 31st day of October, 1962.

Marian Denney, Notary Public in and for said County and State, [Seal.]

My Commission Expires Dec. 29, 1964.

AFFIDAVIT OF FRANKLIN L. MILLER

STATE OF CALIFORNIA,

County of San Francisco, ss:

FRANKLIN L. MILLER, being first duly sworn, does hereby depose and state as follows:

I am a marketing consultant to the food industry. Prior to 1932, I was a food salesman and later Branch Manager of the Saturday Evening Post in New York. In 1931, I was employed as the Manager of the American Weekly in Cleveland and later became that magazine's Western Manager. In these various capacities, I devoted considerable time to problems of marketing and merchandising in the food industry, in part because that industry was always a major source of advertising revenue.

In 1945, I began making frequent reports dealing with a wide range of problems to approximately 74 retail food chains and independent groups as well as to many manufacturers of items distributed through food chains. I have also been retained by innumerable chains and independents

to study particular areas in which they have problems or which they are considering entering.

I have also been retained for various purposes by the National Association of Food Chains, the Association of National Advertisers and other groups.

In March and April, 1961, I conducted a survey of competition in the retail grocery business in the Los Angeles metropolitan area at the request of attorneys for Von's Grocery Co. In this connection, I visited and surveyed several communities in the area. The purpose of this affidavit is to set forth my findings.

Garden Grove-Anaheim Area

I was told that one of the areas in which Von's and Shopping Bag had stores relatively close to each other was in the Garden Grove-Anaheim area. I was frankly astonished at what I found there. Within a few square miles of the Von's and Shopping Bag stores were 26 supermarkets, three corner grocery stores and three discount houses with food departments. In addition to the Von's and Shopping Bag stores, there were 4 Safeway stores, 3 Alpha Betas, 2 Mayfairs and 2 U-Totems. Also represented in the area were Ralph's, Minit Mart, Speedee Mart, Food Giant, Thriftmart, Greater All-American, Market Basket and Cole's. At least 5 independents were also operating. Large discount houses such as Gemco, Fedco and CMA were selling groceries in the area.

The Reseda Area

In Reseda, I found a Von's at 18247 Sherman Way and a Shopping Bag at 19333 Victory Boulevard. I also found 21 competing supermarkets in a three mile radius of the Von's and Shopping Bag stores.

I stood in the parking lot of the Shopping Bag store and observed 152 cars leave the lot. 149 of them turned out of the lot in a southerly or westerly direction, or in other words, *away* from the Von's store. It is reasonable to assume that most of these customers left the lot to go home, and it is therefore permissible to conclude that Shopping Bag drew most of its customers from an area distant from

the Von's store and not from an area between the two stores. A similar observation was made in Von's parking lot—most of its customers turned to the north or east, *away* from the Shopping Bag store. It would therefore appear that the Von's and Shopping Bag stores in Reseda do not draw their customers from the same areas. One of the principal reasons for this is, undoubtedly, that the Los Angeles River and Wilbur Wash run just north of the Shopping Bag store. They form a partial barrier to traffic between the two stores.

The Monterey Park Area

The Von's and Shopping Bag stores in Monterey Park are about $2\frac{1}{2}$ miles from each other. They are separated by Coyote Pass and the Garvey Reservoir. Only two streets, Atlantic Boulevard and Garfield Avenue, run between the two stores. In view of the distance and lack of access between them, one would not expect to find these stores competing for the same customers.

This conclusion is reinforced when consideration is given to the competition posed by other concerns in this area. The Von's store is completely surrounded by stores operated by A & P, McDaniel's, Safeway, Food Giant, Thriftmart, Market Basket and McKeon. The Shopping Bag store is surrounded by two circles of competition, one close by and one farther out. These stores are operated by Alpha Beta, Gateway, Shopper's, Crawford's, Sunfair, Boy's, Market Basket, Safeway, Ralph's, El Rancho and Star Market.

With this battery of competition, it is exceedingly doubtful that the Von's and Shopping Bag stores had customers in common or that the merger would in any way affect the intensity of competition in this area.

The Downey Area

In this area, I found a Von's about $2\frac{1}{2}$ miles from a Shopping Bag. In this same area, competition was offered by Ralph's, All American, Boy's, Dixie Market, Don's Market, Alpha Beta and Shoppers. Again, it is difficult to see how the merger could lessen competition under these circumstances.

The Whittier Area

Whittier is an area which appears to me to have more stores than the population could support. Yet, there they are. For example, there are three huge supermarkets at one intersection, a Safeway, a Food Giant and a King Cole. Also represented in the area are Town & Country, Mayfair, Gateway, Jim's, Fox, Thriftmart, Serv-Mart, A & P, and Alpha Beta. These stores are apparently engaged in a savage battle for customers, for I observed that many different forms of promotional campaigns had been instituted at competing stores. There are also two Shopping Bags and one Von's in the Whittier area, but in view of the distances between them and the competition in the area, it is doubtful that they competed for the same customers.

The West Covina Area

This area is not only served by a Von's and Shopping Bag but by an Alpha Beta, a Glen's Market, an Alexander's, a Thriftmart, a Food Giant, a Farmer's, a Codd's Market, a Sunrise Market, a Fairgrove Market and a large, new Safeway, all of which are south of the San Bernadino Freeway, which more or less cuts the city in half. Competition is also offered in this area by discount houses with food departments. I cannot see how the merger of Von's and Shopping Bag could adversely affect this sort of intense competition.

Other Areas

In addition to the foregoing areas where there is a Von's and a Shopping Bag store, I visited other areas in which there was no potential competition between the two concerns. They include Covina, where I found a Shopping Bag store and many other stores including those of Safeway, Yor-Way, Alexander's, Valleydale, McDaniels, Food Giant, Market Basket and Codd's. In El Monte, I found stores of Shopping Bag, McDaniels, Commonwealth Market, Carlton Market, Miles Market, Safeway, Food Giant, Market Basket, Crawford's, Fox, Jax Market and Fine Market.

Knowing that only a few years ago Von's and Ralph's were the only prominent competitors in the Crenshaw area,

I decided to visit that community as well. This time I found the Von's store surrounded by stores operated by Boy's, Jay's, Safeway, Better Foods, Daylight, Alpha Beta, Thriftmart and Fox.

The only conclusion I can draw from my observations is that competition is intense and vigorous in Los Angeles and becoming more so.

It is also of significance that two of the nation's largest chains have recently entered this market. They are American Stores, through its acquisition of Alpha Beta, and Food Fair, which is now operating Fox Markets. Add these two powerful concerns to the national and regional chains already in Los Angeles (Safeway, A & P, Lucky and Mayfair), a multitude of local chains and a vast number of independents, and it is apparent that Von's does not and cannot dominate this market. From my own knowledge of this area, I can state that competition in the retail grocery business has been and is intense and vigorous.

Under these circumstances, I cannot see how the merger of Von's and Shopping Bag could lessen competition in any way. First, there was little if any competition between Von's and Shopping Bag before the merger, so, on this score, there was virtually nothing to eliminate or lessen. Second, the Shopping Bag stores remain as competitive factors in each of the communities where these stores are located. Third, in each of those communities as well as in every other area I have seen, there are a number of able, vigorous competitors carrying on an intensive battle for patronage. Nothing resulting from the merger can change that, or, as far as I can see, stem the tide of increasing competition among the area's numerous chains and independents.

By the same token, I see no indication that this market will become concentrated or dominated by a few concerns. A quick comparison of this area and others with which I am familiar, such as Milwaukee, where A & P alone has a third of the market and other chains all but approximately 12%, or Washington, D. C., where four national chains control 75% of the market, or Philadelphia, where four chains control more than 65% of the market, or Albuquerque, where Safeway alone has 27% of the market, shows that the Los Angeles area is not concentrated. The intensity of com-

petition and the number of competitors in Los Angeles, including the strength of the independents associated with Certified Grocers and Orange Empire, indicates that no chain has any chance of controlling or dominating this market. The strength of Certified Grocers and Orange Empire distinguishes this market area from other major marketing areas in the United States.

Franklin L. Miller.

Subscribed and sworn to before me, this 18th day of October, 1962.

Marion M. Gorman, Notary Public in and for the City and County of San Francisco, State of California, [Seal.]

My Commisison Expires Oct. 18, 1964

DEFENDANTS' EXHIBIT BC

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title omitted]

AFFIDAVIT OF WILLIAM DOVER

STATE OF CALIFORNIA,
County of Los Angeles, ss:

WILLIAM DOVER, being first duly sworn, does hereby depose and state as follows:

I am presently Vice President of The John B. Knight Company, an independent market research firm. From February 1938 to January 1962, I was the Director of the Business Research Division of the Los Angeles Examiner. The Examiner ceased operations on January 6, 1962.

In the summer of 1961 and while I was still with the Examiner, I was requested by attorneys for Von's Grocery Co. to prepare a map showing the location of each of the stores operated in the Los Angeles metropolitan area by the following 27 chains as of July 1961:

A & P
Alexander's
Alpha Beta
Better Foods
Boy's
Carl's Ranch Markets
Cole's
Crawfords
Food Giant

Gateway
Greater All-American
Hughes
Jurgensen's
Kory's
Lucky
Market Basket
Mayfair
McCoy's

Mednick Brothers
Pix
Ralph's
Safeway
Shoppers
Shopping Bag
Sunfair
Thriftmart
Von's

I had on many occasions in the past prepared similar maps for use by the Examiner, its customers and others.

In order to prepare the map requested by Von's attorneys, I first solicited each of the above named concerns for a list of the locations of each of its stores as of July 1961. The information received in response to that request is set forth in a report I prepared (Exhibit J).

Working under my supervision and direction, employees

of the Examiner's Business Research Department located on a map the addresses of each store listed by the chains (as set forth in the report referred to above) and inserted a colored pin at each store location. The color of the pin used identifies the chain operating the store in accordance with particular colors previously designated for each chain. In order to assure complete accuracy, the location of each pin was thereafter rechecked on two separate occasions against the lists furnished by the chains. This map is Exhibit K.

The map shows the number and location of stores operated by the 27 leading chains in the Los Angeles metropolitan area up to July 1961. Of course, it does not include the stores opened by these same chains since that time or the hundreds of stores which are operated by other chains and independents in this area.

William Dover.

Subscribed and sworn to before me this 21st day of February, 1963.

— Matsumoto, Notary Public in and for the County of Los Angeles, State of California, [Seal.]

My Commission Expires July 22, 1963.

DEFENDANTS' EXHIBIT BD

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 C

[Title Omitted]

AFFIDAVIT OF DOROTHY D. COREY

STATE OF CALIFORNIA,
County of Los Angeles, ss:

DOROTHY D. COREY, being first duly sworn, does hereby depose and state as follows:

I am the director of Facts Consolidated, which in 1961 became a division of C-E-I-R, Inc. Prior to that time, Facts Consolidated was a partnership (in which I held a partnership interest), and later, commencing in 1960, a corporation (of which I was President).

Facts Consolidated was and is a marketing research organization which has been in business in Los Angeles since 1938. It has conducted in excess of 5,000 marketing studies covering an extensive range of subjects and involving virtually all types of research problems. It annually serves an average of 150 clients. Among them are many companies involved in food distribution.

Facts Consolidated has had extensive experience in studying the retail grocery business in Los Angeles. On a continuing basis for the last 18 years, Facts Consolidated, under my supervision and direction, has conducted in-the-home surveys to determine consumer preference for the areas of various food chains. These surveys have been made for the Los Angeles Times and are contained in the Times' Continuing Home Audit, which is distributed every two months. A copy of the most recent Home Audit dealing with the grocery business is attached to this affidavit.

Facts Consolidated has also been employed on many occasions to conduct customer surveys to determine reactions to existing or proposed grocery stores, or the effectiveness of grocery store advertising, or the areas served by a par-

ticular store. Von's Grocery Co. has called upon Facts Consolidated to conduct such surveys on frequent occasions in the past.

Survey of Competition Between Von's and Shopping Bag Prior to the Merger

In November, 1959, O'Melveny & Myers requested Facts Consolidated to determine the extent of existing competition between Von's stores and the stores operated by Shopping Bag Food Stores. The procedure which we followed in making this study, which included conducting interviews, compiling data thus obtained and analysing that data to reach our conclusions, are procedures which have been regularly followed by Facts Consolidated for many years (see, for example, Exhibits S through Z), and which have been adopted by other recognized research organizations in making comparable surveys. These procedures and the results achieved through their use have proven reliable in the past and have consistently afforded Von's and other of our clients with information on which they have relied in making business decisions.

We first set out to establish which stores of the two chains were in sufficiently close proximity to each other to make it appear possible that competition existed between them. We concluded that the stores which should be made the subject of study were the Von's and Shopping Bag stores in Whittier, Garden Grove, Downey, Alhambra and Monterey Park.

On Friday and Saturday, November 13 and 14, 1959, we stationed trained staff interviewers in the parking lots of each store being studied. Using a prepared questionnaire, our staff members asked customers questions designed to determine where each did most of his shopping, the market which was his second choice, the principal reasons for his shopping habits and the like. The customer was also asked to identify the street intersection nearest his home.

In the course of this study, more than 3,000 interviews were conducted. The results of those interviews were analyzed and tabulated in a detailed report (Exhibit M).

Following the making of said interviews, Facts Consolidated obtained maps of the vicinities surrounding each store. A red star was placed on those maps at the location

of each Von's store and a green star placed at the location of each Shopping Bag store. The intersection named by each person interviewed was located on the map in question and a colored dot entered at that point, one dot for each respondent. If the person interviewed stated that he did most of his shopping at a Von's store, a red dot was used. If he said he most frequently shopped at a Shopping Bag store, a green dot was used. Thus, these maps (Exhibits N through R) show the area from which the stores in question drew their customers. Attached to each map is a list of the number of dots placed in each intersection mentioned by the persons interviewed.

Our report and the maps referred to above demonstrate that as of November, 1959 (prior to the merger), there was very little competition between the Von's and Shopping Bag stores so surveyed. The following are the highlights of our study.

The Whittier Area

The maps we prepared indicate strongly that there was very little overlap in the draw areas of the two Shopping Bag and one Von's store in Whittier.

Our interviews show that of the 264 residents who named Von's as their first choice, only 26, or 10%, named Shopping Bag as a second choice. It would appear that the Von's store in Whittier faced greater competition from Alpha Beta and Thriftmart stores than from Shopping Bag.

Only 4% of the patrons at Shopping Bag's store at 1183 Quad Way, Whittier, named Von's as their second choice. Of greater competitive significance were stores operated by Market Basket and Food Giant. At Shopping Bag's store at 127 North Hacienda, Whittier, 21% of the customers naming Shopping Bag as their first choice named Von's as their second choice. However, a greater number preferred Alpha Beta, which also has a store nearby.

The Garden Grove Area

The draw areas of the Von's and Shopping Bag stores in Garden Grove do not overlap except that a more or less isolated number of Von's customers came from the vicinity

immediately surrounding Shopping Bag's store. However, the larger area just a little farther out from the Shopping Bag store is very predominantly populated by Shopping Bag customers.

Our interviews showed that only 5% of Von's customers in Garden Grove regarded Shopping Bag as their second choice. Thirteen percent of Shopping Bag's customers named Von's second. Stores operated by Alpha Beta, and Thriftmart were more significant competition for both Von's and Shopping Bag stores than were Von's and Shopping Bag to each other. Von's also faced competition from stores of Food Giant, Coles and Safeway, which competition appeared to be of greater significance than the competition offered by the Shopping Bag store.

The Downey Area

The trading areas of the Von's and Shopping Bag stores in Downey are quite distinct and separate as our map shows. This conclusion is borne out by our interviews. Only 3% of those naming Von's as their first choice named Shopping Bag as second choice. Only 6% of Shopping Bag customers named Von's second. Stores of Alpha Beta, Ralph's and a number of small concerns were stronger competitors of both Von's and Shopping Bag.

The Alhambra Area

Our map shows that the Von's store in Alhambra has a larger, more scattered draw area than the Shopping Bag store. However, the Shopping Bag store had strong loyalty from customers in its immediate vicinity, and again, there was very little overlap in the draw areas of the two stores.

Only 5% of Von's customers named Shopping Bag as a second choice. Von's faces much stiffer competition in this area from the stores of Crawford's, Gateway, Market Basket and Safeway. Six percent of Shopping Bag's customers indicated Von's as their second choice. Of greater competitive significance to Shopping Bag were stores operated by Crawford's and Gateway.

The Monterey Park Area

Our Monterey Park map shows a competitive situation similar to that in Alhambra. Again, the Von's store had a more scattered trading area, Shopping Bag had strong loyalty from nearby customers, and only a few Von's customers came from areas which were otherwise predominated by Shopping Bag customers.

Von's customers indicated that the stores of Market Basket, McDaniel's, Food Giant and Alpha Beta were all more significant Von's competitors than was the Shopping Bag store, which received only 4% of the second choice votes. Shopping Bag's principal competitor was Gateway, while Von's was indicated as a second choice by 18% of Shopping Bag's customers.

Conclusions

The conclusions which I draw from the foregoing study are that:

1. Prior to the merger, there was very little competition between the stores of Von's and Shopping Bag. For the most part, they drew their customers from different areas.

2. In none of the areas studied was either Von's or Shopping Bag the other's principal competitor. In no case did a Von's store appear as the most important second choice of Shopping Bag customers. In no case did a Shopping Bag store appear as the most important second choice of Von's customers.

3. In each area studied, both Von's and Shopping Bag faced competition from the stores of at least 6 other chains and a number of independents. This competition was significantly more important than any competition between the stores of Von's and Shopping Bag.

4. Our study also shows that by far the most important reason given for preferring one store over another was convenience. Forty-eight percent of those interviewed who indicated that they do most of their shopping at a Von's store gave convenience as their reason. Fifty-eight percent of those who preferred Shopping Bag did so on grounds of convenience. These statistics are consistent with other

studies we have conducted of the grocery business in Los Angeles. Apparently shoppers in this area will most often be drawn to the store closest to them, and it is undoubtedly proximity, and hence, convenience, which contributes more than any other factor to the limited draw areas of particular stores. Convenience is again the reason why the existence of nearby competition may cut down a store's trading area. Our studies have shown that since it is more convenient to shop at the supermarket nearest one's home, most shoppers will not pass by one store to shop at another farther away. Thus, the existence of competing markets in the vicinity of Von's and Shopping Bag stores undoubtedly limited the competition between these two concerns by limiting their trading areas. In each area studied, Von's and Shopping Bag faced competition from stores operated by a number of other concerns.

Other Surveys

In past years, the staff of Facts Consolidated, under my supervision and direction, has conducted a number of surveys for Von's using procedures substantially similar to the ones employed in the study of competition between Von's and Shopping Bag. The following is a list of some of the more significant survey reports prepared for Von's together with a brief description of what they show:

1. "Map Overlay Study for Von's Grocery Co., October, 1955" (Exhibit S)—This study was conducted for Von's advertising department in order to determine the area from which each of its stores in 1955 drew its customers and hence the areas in which Von's advertising ought to be centered. Our study involved locating the addresses of a representative number of Von's customers on a map and then determining the distance from their residences to the Von's store where they shopped. As a result of our study, we concluded that in every case, the majority of customers came from less than 2 miles away. In most cases, the majority of customers came from less than a mile away. The results of our study for each of Von's 22 stores are as follows:

Store No.	% of Customers From Within 1 Mile	% of Customers From Within 2 Miles
1	61%	83%
2	48%	82%
3	84%	94%
4	40%	70%
6	58%	87%
7	76%	91%
8	94%	97%
9	88%	99%
10	68%	84%
11	95%	100%
12	76%	89%
13	52%	78%
14	48%	89%
15	35%	63%
16	48%	85%
17	38%	67%
18	56%	78%
19	55%	85%
20	47%	73%
21	87%	90%
22	29%	62%
23	35%	77%

It must also be emphasized that the above study was conducted in 1955. Since that time, new stores have been built by competitors in the vicinity of almost all of Von's stores. This is particularly true in the San Fernando Valley, where Von's stores Nos. 17, 22 and 23 are located. As we have noted above, the operation of nearby competitive stores tends to limit the draw area of a given store so that there is no doubt that in many areas Von's draw area has been reduced since 1955.

2. "Consumer Shopping Habits—Area 1—Eightieth and Emerson Avenue for Von's Grocery Company—March, 1955" (Exhibit T)—This customer survey showed that Von's faced competition from Ralph's, Jim Dandy, Mayfair, Thriftmart and other concerns in the area surveyed.

3. "Consumer Shopping Habits in the Vicinity of Florence Avenue and Paramount Boulevard and Riverside Drive and Fulton Avenue for Von's Grocery Co.—March, 1955" (Exhibit U)—These customer surveys show intense competition in the areas involved. In the Florence-Paramount area, Von's was an insignificant competitive factor as compared to Raisin Markets, Don's, Safeway, Ralph's, All American, Shopper's, Horton's and other miscellaneous meat, produce and fish markets. In the Riverside-Fulton area, Von's faced competition from Thriftmart, Ralph's, Alexander's, Safeway, Valley Village, McDaniel's, Fox,

A & P, Mayfair, Bon's, L-V Foodland, Nero's Food Mart, Gelson's, Carty Brothers, Butler Brothers, Stop & Shop and others.

4. "Consumer Shopping Habits in the Vicinity of Carson Street and Woodruff Avenue, Lakewood, for Von's Grocery Co., February, 1956" (Exhibit V)—This customer survey shows Von's was an insignificant factor in an area served by Hiram's, Iowa Pork Shop, McCoy's, Boy's, Thriftmart, U-Tel-Em, Market Basket, Greater Central Market, Alpha Beta, Safeway, Shorty's, Cole's, F & W Market, Royal Market, McDaniel's, Clark's, Plowboy's Market, Jim Dandy, Ralph's and Raisin, among others.

5. "Consumer Shopping Habits in the Vicinity of Santa Gertrudis Avenue and Whittier Boulevard for Von's Grocery Company, February, 1956" (Exhibit W)—This survey shows that Von's had an insignificant share of a market divided between Alpha Beta, Shopping Bag, Market Basket, Esko Foods, Stater Bros., Raisin, Nixon's Market, Mayfair, Safeway, Ralph's, Colima Food Center, Town and Country Market, Orcutt's Whittier, and others.

6. "A Study of Resident Reaction to a Proposed Shopping Center at Pacific Coast Highway and Calle Mayor, Hollywood Riviera, conducted for Von's Grocery Co.—June, 1950" (Exhibit X)—This survey of customers showed that a proposed Von's store in a relatively undeveloped area would meet competition from Jim Dandy, Food Giant, Thriftmart, Safeway, Frontier Market, Howard's, Ralph's, De Simone's, Moore's Market and a host of other chains and independents.

7. "Opinion Study of Stores in the Crenshaw Area, conducted for Von's Grocery Co., August, 1959" (Exhibit Y)—This customer survey showed that most residents of the Crenshaw area preferred stores operated by Boy's, Ralph's and Daylite to the one operated by Von's and that competition also came from Safeway, Alpha Beta, Thriftmart, Patton's, Fox, Dobson's and others.

8. "Shopping Habits Among the Residents of a Portion of the Sherman Oaks Area, prepared for Von's-Shopping Bag, April, 1960" (Exhibit Z)—This customer survey showed that a Von's store in Sherman Oaks would face competition from Hughes, Safeway, Ralph's, Thriftmart, Fox, Gelson's, Bel-Air Market, Bestway and others.

Opinion of Effect of the Merger on Competition

As is in part indicated by the foregoing studies, the retail grocery business in the Los Angeles metropolitan area has been for many years and still is intensely competitive. In my opinion, the Von's-Shopping Bag merger has not resulted in any diminution of that competition. If anything, competition is keener and more vigorous now than before the merger.

It is also my opinion based on my experience of the past 25 years that no chain or group of chains has in this period dominated the Los Angeles market, and I do not see any sign or indication that any chain or even a group of chains could control competition in this area. For years, the Los Angeles metropolitan area has been subjected to the influx and competitive effort of numerous chains and independent stores. No concern has yet been able to capture a decisive or dominant share of the market, and there is no reason to expect that any will in the foreseeable future. The hundreds of smaller chains and independents have demonstrated their ability to compete effectively against the stores of Safeway, Ralph's and the other leaders in the market. There is no reason to conclude that they cannot continue to compete effectively against Von's, and my studies of the grocery business since March of 1960 have demonstrated to me that they can and do compete effectively against Von's and that there has been no lessening of competition as a result of this merger.

Dorothy D. Corey.

Subscribed and sworn to before me, this 22nd day of October, 1962.

Darleen Caligiuri, Notary Public in and for said County and State, [Seal.]

My Commission Expires April 30, 1966.



CONTINUING HOME AUDIT

Covering Homes Representative of the Los Angeles Metropolitan Area¹

Question asked: "Where did you

		COMBINED ANNUAL FINDINGS			
Homes Buying	Per Cent	1959 ²	1960	1961	
	Number ³	1, 984, 696	2, 233, 321	2, 313, 246	2,
MARKET POSITION		SAFEWAY 10.6%	SAFEWAY 11.6%	SAFEWAY 11.6%	SAF
2		RALPHS 8.8	RALPHS 8.8	RALPHS 8.2	VO
3		VON'S 5.1	VON'S SHOP.B 8.6	VON'S SHOP.B 7.9	RA
4		MKT. BASKET 3.9	MKT. BASKET 5.9	MKT. BASKET 5.4	FO
5		FOX 3.7	FOOD GIANT 4.6	FOOD GIANT 5.3	MK
6		FOOD GIANT 3.5	ALPHA BETA 4.0	ALPHA BETA 4.3	THI
7		THRIFTMART 3.5	THRIFTMART 3.8	THRIFTMART 3.9	AL
8		SHOP. BAG 3.3	FOX 3.7	BOYS MARKET 3.3	BO
9		MC DANIEL'S 2.6	BOYS MARKET 2.2	FOX 2.6	HU
10		ALPHA BETA 1.9	MC COY'S 2.0	SHOP. MKT. 2.0	SH
11		BOYS MARKET 1.9	SHOP. MKT. 1.7	LUCKY 1.6	LU
12		MC COY'S 1.5	MAYFAIR 1.6	HUGHES 1.6	FO
13		SHOP. MKT. 1.1	ALEXANDER'S 1.2	MC COY'S 1.6	AL
14		ALEXANDER'S 1.0	LUCKY 1.2	MAYFAIR 1.1	MA
15		YOR-WAY 1.0	MC DANIEL'S 1.2	BETTER FOODS 1.0	MC
16		CRAWFORD'S 0.9	HUGHES 0.9	ALL AMERICAN 1.0	CO
17		MAYFAIR 0.9	A & P 0.7	ALEXANDER'S 0.8	BET
ALL OTHERS		44.8	36.3	36.8	
TOTAL		100.0%	100.0%	100.0%	

* Previously included in "All Others."

¹Los Angeles and Orange Counties. Methodology available upon request.

²Findings prior to 1960 do not include Orange County.

³Per cent of Homes Having, as shown in Home Audit, applied to number of dwelling units as of January each year.

GROCERY PURCHASES
Store

B-1

— NOTE —

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you buy the majority of your groceries last week?"

1962 BIMONTHLY FINDINGS					
January-February	March-April	May-June	July-August	September-October	November-December
99.2%	99.8%	99.5%	99.0%		
2,405,464	2,420,013	2,412,739	2,400,614		
SAFEWAY 11.8%	RALPHS 9.6%	SAFEWAY 11.9%	SAFEWAY 11.8%		
VON'S SHOP. B. 8.5	SAFEWAY 9.0	RALPHS 6.7	RALPHS 8.2		
RALPHS 8.3	VON'S SHOP. B. 9.0	VON'S SHOP. B. 6.4	VON'S SHOP. B. 6.7		
FOOD GIANT 5.4	MKT. BASKET 6.0	MKT. BASKET 5.6	MKT. BASKET 6.1		
MKT. BASKET 5.0	FOOD GIANT 5.5	ALPHA BETA 4.9	FOOD GIANT 4.9		
THRIFTMART 4.4	THRIFTMART 4.0	FOOD GIANT 4.8	ALPHA BETA 4.2		
ALPHA BETA 3.1	ALPHA BETA 2.9	THRIFTMART 4.3	THRIFTMART 3.7		
BOYS MARKET 3.0	BOYS MARKET 2.7	BOYS MARKET 3.8	BOYS MARKET 3.2		
HUGHES 2.7	HUGHES 2.5	FOX 2.8	HUGHES 2.4		
SHOP. MKT. 2.3	SHOP. MKT. 2.4	HUGHES 2.7	LUCKY 2.2		
LUCKY 2.0	FOX 2.1	LUCKY 2.7	ALEXANDER'S 1.6		
FOX 1.7	LUCKY 2.0	ALEXANDER'S 1.9	FOX 1.6		
ALEXANDER'S 1.5	COLE'S MARKET 1.5	MC COY'S 1.5	BETTER FOODS 1.4		
MAYFAIR 1.4	ALEXANDER'S 1.4	BETTER FOODS 1.4	GELSON'S* 1.2		
MC COY'S 1.4	BETTER FOODS 1.2	STATER BROS.* 1.3	SHOP. MKT.* 1.1		
COLE'S MARKET 1.2	MC COY'S 1.2	FOODS CO.* 1.1	DALES* 1.0		
BETTER FOODS 1.1	MAYFAIR 1.0	ABC GROCERY* 1.0	PANTRY* 1.0		
35.2	36.0	35.2	37.7		
100.0%	100.0%	100.0%	100.0%		

Prepared by the MARKETING RESEARCH DEPARTMENT of the Los Angeles Times
FIELD WORK on 13M TABULATIONS by FACTS CONSOLIDATED

[fols. 1-2] DEFENDANTS' EXHIBIT BD

IN THE UNITED STATES DISTRICT COURT

No. 33-60-CC

[Title omitted]

Deposition of DOROTHY D. COREY, taken on behalf of the Plaintiff, at Room 806, Federal Building, Los Angeles, California, commencing at 11:15 A.M., Wednesday, May 22, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to oral stipulation.

[fol. 3] DOROTHY D. COREY, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Coyle:

Q. Mrs. Corey, would you state your full name and address for the record, please?

A. My business name is Dorothy Corey, my married name is Mrs. Roy S. Frothingham.

Q. What is your address?

A. My business address is 9171 Wilshire Boulevard, Beverly Hills.

Q. Mrs. Corey, when did you first become affiliated with Facts Consolidated?

A. In 1938.

Q. What was your position with Facts Consolidated at that time?

A. I opened the Los Angeles office.

Q. What was your employment prior to opening the Los Angeles office of Facts Consolidated?

A. Immediately prior?

Q. Yes.

A. I had been with Elmo Roper in New York City.

Q. Were you doing marketing work with him?

[fol. 4] A. Marketing research, yes.

Q. What position did you have with him?

A. I was pre-testing and developing questionnaires, assistant project director.

Q. What formal training do you have in the field of market research?

A. I have a Bachelor's and graduate work in marketing and statistics from Northwestern. I don't have my Master's.

Q. What year did you get your Bachelor's Degree?

A. '25. That was in '32 I believe I was studying at Northwestern under Dr. Linden Brown.

Q. Do you have a copy of your affidavit with you, Mrs. Corey?

A. Yes, I do.

Q. You state on Line 23 of Page 1: "On a continuing basis for the last 18 years, Facts Consolidated, under my supervision and direction, has conducted in-the-home surveys to determine consumer preference for the areas of various food chains." When you refer to "consumer preference," do you mean the personal preference of consumers to buy particular products at particular stores?

A. Yes. A preference or a more factual answer as to where they buy most of their groceries, most of their meats, most of the vegetables. The interviewers would always ask the question exactly as it is worded on the questionnaire.

Q. Have you found by making these interviews and [fol. 5] these studies you are able to measure personal preferences statistically?

A. Yes. The answers are tabulated and presented in statistical form to the questions.

Q. And they are statistical measurements of personal preferences?

A. They are either—if the question asks preference it would be a statistical measure. It would be a statistical measurement of the content of the question.

Q. Is it your opinion that these activities and these studies are of a practical benefit and assistance to food stores?

A. Yes.

Q. Are these statistical measurements of personal preferences generally accepted in the marketing field as valid?

A. Yes.

Q. Do established authorities in the marketing field acknowledge that you can measure consumer personal preferences statistically?

Mr. Alsup: I object to the question on the ground that it is confusing and ambiguous. She testified the consumer preference is as a result of interviews and the results of those interviews are tabulated statistically.

Mr. Coyle: Would you read my question back.

(The reporter read the pending question.)

[fol. 6] Mr. Coyle: Q. I will add: On the basis of the interviews which you tabulate.

A. I would like to say that your use—I am not sure that I know your use of the word “preference.” If I might illustrate.

Let me say that there is a coffee shortage and we ask people what brand of coffee they prefer and then we ask what is on hand. There might be a difference. But if there is no coffee shortage and there is a marked preference, the brand a person prefers and the brand that is on hand is apt to be the same. In the continuing home audit we get into 85 per cent of the kitchens and check the brands on hand. It is as factual a study as we can make it rather than depending upon attitudes. And you are asking me about this study, the continuing home audit where we are in 85 per cent of the kitchens.

Q. I was really asking you more, or intended to ask you more about the personal preference of a consumer to shop at a particular grocery store. Can you measure that statistically on the basis of your interviews?

A. Yes, I think that we can. I believe that we can, because most people shop where they prefer to shop. There may be certain exceptions to that in which you might prefer to shop in some wonderful specialty store, but nevertheless shop at the most convenient supermarket. But the question that is asked on the continuing home audit is, “Where did [fol. 7] you buy most of your groceries last week?” The question is not, “Which store do you prefer?”

Q. But you measure the preference on where they buy.

A. Buy most of their groceries. And in checking brands

on hand there is a constant remembrance of the shopping pattern.

Q. You state on Page 2 of your affidavit that you have major surveys on the effectiveness of grocery store advertising. On the basis of these surveys and your background in the industry have you found that grocery store advertising is an important aspect of developing consumer preference for a particular store?

A. Will you repeat the question?

(The reporter read the pending question.)

Mr. Vaughn: I will object to the question. I don't know what grocery store advertising you are talking about. Is this price advertising or institutional advertising?

Mr. Coyle: I am referring to grocery store advertising that she referred to on Page 2.

The Witness: Could I say this, that studies we have made in grocery store effectiveness have been confidential studies made for particular clients. They are not published as the home audit is and there is a great deal of difference in grocery store advertising effectiveness, depending upon the skill of the advertising department. That is one of the reasons for making the study.

Mr. Coyle: Q. Do you advise as to good advertising policies as a result of your study?

A. We are not an advertising agency. We are only a marketing research agency. We do analyze the findings and in some cases we would make recommendations.

Q. If a store uses marketing research and sound advertising policies can it develop consumer preferences for its stores?

Mr. Vaughn: If you know, Mrs. Corey.

The Witness: I think both of those are tools but they are not the entire picture.

Mr. Coyle: Q. But they are part of it.

A. It would only be a tool if they use it properly. They may not use it properly. That depends on management. I wouldn't want to say.

Q. What other tools would management have to develop consumer preference?

A. I think that would be up to management. There would be many tools.

Q. As a result of using these tools do stores build up consumer preferences for their trade?

A. The purpose of advertising is to communicate, and certainly if you are going to measure the results of advertising effectiveness you have to define the goal of the advertising. Now, if the goal of the advertising is to build up consumer franchise then the research company measures [fol. 9] how effectively that has been done.

Q. Have you in your research measured how effectively that has been done?

A. We have.

Q. And have some chains built up a substantial consumer preference for their stores as a result of that?

A. No. Those are confidential studies.

Q. In your opinion. I am not asking you to name any particular store, but have you formed an opinion as to whether stores are able to develop consumer preference?

A. I don't know.

Mr. Vaughn: I object to the question as calling for a conclusion with the word "substantial" and being confusing and ambiguous you refer to some chains and don't say where.

The Witness: I don't know what the goal of the store—the market you are talking about is. I would say some do a better job than others.

Mr. Coyle: Q. And the ones that do a better job develop consumer preferences for their stores, do they not?

A. That would be the goal of their advertising, I should assume.

Q. And it is based upon the premise that good advertising can build up consumer preferences, is it not?

A. I have never thought so. In my experience, sir, the worse thing you can do is advertise a bad product. The first thing you have to do is have a good product. But if [fol. 10] you have a good product and advertise it, do you build up consumer preferences for the store?

A. You have to have a good price.

Q. If you have a good price and a good product and advertise it?

A. You may have to have a good location and many more.

Q. What are some of the other factors that go into building up consumer preference?

A. If you ask me—

Q. You said, "Many more."

A. Management of the store, personnel of the store, arrangement of the files, lighting in the store, color factors, exits and entrances, noise, parking lot convenience. That is a few more.

Q. Would layout of the store be an important factor?

A. It could or could not be.

Q. It is one of the factors, is it not?

A. It is one of the factors in the store, yes.

Q. And the sum total of all these factors would build up the consumer preference of a particular store.

A. I mentioned location, which is very important.

Q. Yes.

A. Parking facilities are very important. The hours in which the stores are open may be very important. Even check cashing might be important, personnel. All of these things would go into it.

[fol. 11]— Q. And do all of these things go together to form an image that is placed before the consumers?

A. I would say that those go into the image or the profile of the store.

Q. And the image or profile of the store then would determine the consumer preference, would it not?

A. It would certainly contribute. Let's say cleanliness and variety of merchandise and the brands and maybe even the fact whether the type of meat, whether there are butchers available, whether there is a liquor store or not. There are so many factors that go into it.

Q. It is your business to conduct these interviews and conduct the surveys to determine how effective the store is with respect to these various facets and then to tabulate these interviews statistically, is it not?

A. Well, we are a problem solving organization and we don't sell a technique. We try to solve a particular problem once it has been clearly stated and defined.

Q. And some stores have come to you, or some chains have come to you and asked you to help make a study of their operations in a particular area or a number of areas

to determine how effective they are in building up consumer preference, have they not?

A. In marketing areas, yes. Not in manufacturing areas.

Q. I understand just in marketing areas.

[fol. 12] A. That's right.

Q. And on the basis of that you make the statistical tabulations and help them try to solve their problems.

A. Statistical tabulations are usually part of it, yes.

Q. In the course of these studies that you have conducted over the years have you noted that a housewife will generally shop at more than one store during a given period of time, say a three-week period?

A. Well, I have findings of some of the studies.

Q. And have your findings been that the housewives generally will shop at more than one store?

A. I think we have a study that has been submitted to you that shows that people can always name one store and a smaller percentage can name two, and a smaller percentage can name three.

Q. But more than half will name more than one store, won't they?

A. I would say.

Q. And more than half would name two stores?

A. I doubt that.

Q. I meant more than half will name one store and not more than half will name two stores?

A. Yes.

Q. Of course, is that over a two- or three-month period or for how long a period?

[fol. 13] A. It all depends upon the question. You can ask it in the last week or last month, depending upon what your question is.

Q. On the basis of your studies, your general studies, not the particular studies that you have done here, have you made any findings or formed any conclusions as to how many stores a housewife will shop at, that is the average housewife will shop at in a three-month period?

A. Not particularly. I don't recall particularly a three-month period. The average housewife shops once a week. A family will do shopping once a week and in Los Angeles we find that the man often does the shopping. It becomes

a question of who has the most muscles when you carry the groceries home.

Q. Do most housewives shop by automobile?

A. In Los Angeles?

Q. Yes.

A. Yes.

Q. Would you say that more than 90 per cent of them shop by automobile in Los Angeles?

A. I would want to check that figure.

Q. Does that sound about right?

A. I think it would vary by area in the city. In the Wilshire district I would say that it would be much lower than that. It would vary by area.

Q. Los Angeles is a very mobile community, as communities go, is it not? Compared to the rest of the country it is one of the more mobile areas, is it not?

A. I think you could call it mobile in that most people own cars.

Q. And do a lot of driving; isn't that right? Don't they do a lot of driving?

A. They do a lot of driving. Not necessarily for groceries but they drive. In studies we have made for automobile usage it shows that it is fairly high from the rest of the country too. But maybe a little higher, particularly because so many families are two car and three car families.

Q. You say that most families shop once a week. Do most families do incidental shopping during the course of the week in addition to their principal shopping that they do once a week?

A. When you say "most," do you mean over 50 per cent? Is that what you mean by "do incidental shopping"?

Q. Yes.

A. This is just an opinion. I would say in my opinion that most do incidental shopping.

Q. And when they do their shopping one day a week do they generally shop at the same store or do they shop at several stores on that one day a week?

A. I would say that generally they shop at one store and maybe a second store.

[fol. 15] Q. Have you done any studies as to the extent which consumers will study the weekly advertising in the metropolitan papers prior to doing their shopping?

A. The metropolitan papers?

Q. Yes.

A. If I may be helpful, I would say, yes, but also—I will say "Yes."

Q. Have you made studies as to the extent to which they study the local papers?

A. You mean the community papers?

Q. Yes.

A. The paid dailies?

Q. Yes.

A. Yes.

Q. What percentage of the consumers will study either the metropolitan papers or the local papers, that is the local community papers, prior to doing their weekly shopping?

Mr. Vaughn: You mean study the grocery ads in the papers, Mr. Coyle?

Mr. Coyle: She said she made studies whether they all study them. I am asking what percentage study them.

The Witness: Have those studies been introduced?

Mr. Vaughn: There have been some of them that have been.

The Witness: It varies from time to time. I think most [fol. 16] of the studies—I don't want to quote a figure because it varies in various areas and it varies—

Mr. Coyle: Q. This is another item in building consumer preference, is it not, that weekly advertising in newspapers?

A. Yes. And this is an item of interest not only to the market but to the media.

Q. And it's a pretty important way of building consumer preference, is it not, this newspaper advertising?

Mr. Vaughn: I think that calls for the conclusion of the witness.

Mr. Coyle: She is an expert witness.

The Witness: I would say that various media have been used, newspapers, the stores use direct mail. I mean there are many types of media to communicate.

Mr. Coyle: Q. And is newspaper advertising the most effective medium to communicate?

A. I think that would depend on what you are trying to

communicate. And I wouldn't want to state that between radio, TV, newspaper and so on, that any one medium is the most effective.

Q. There is much more newspaper advertising in the grocery field than radio and television advertising, is there not?

A. For the Thursday specials and so on, yes, I would say so. So evidently in their opinion they think it is the [fol. 17] most effective.

Q. And in your studies you haven't found that it is not the most effective, have you?

Mr. Vaughn: Would you repeat that?

Mr. Coyle: Q. Have you found in your own studies whether they are correct in their conclusion that it is the most effective medium?

A. Well, I say that I think it is effective. I don't want to say which medium is the most effective because it would depend upon each newspaper, how they spend their advertising budget.

Mr. Hughes: Each grocery chain.

The Witness: Each grocery chain.

Mr. Alsop: Or each newspaper.

The Witness: Each grocery chain, how it spends its advertising budget.

I am sorry, but these are kind of complex, where management in markets disagree. It is hard to come to a "Yes" or "No" conclusion.

Mr. Coyle: Q. On the middle of Page 3, Line 10 you refer to a study which you made for counsel in this case in which you interviewed 3,000 people. Were these interviews made to determine the consumer preferences and to record them statistically with respect to two Shopping Bag stores and one Von's store in Whittier, one Von's store and one Shopping Bag store in Garden Grove, one Von's and one [fol. 18] Shopping Bag store in Downey, one Von's and one Shopping Bag store in Alhambra and one Von's and one Shopping Bag store in Monterey Park?

A. If you have read correctly, and I am sure you have, yes.

Q. That is a total of 11 stores, is it not?

A. I believe that is 11 stores.

Q. How representative are these 3,000 interviews?

A. I think they are very representative.

Q. How many consumers would each interview represent?

A. How many consumers would each interview represent? Frankly, I don't know because I don't know how many customers they have.

Q. Do you have any opinion? Did you go into the question of how many customers the 11 stores would have?

A. No, we didn't.

Q. How did you arrive at the number of 3,000?

A. Well, actually we operate on the theory that it is the size of the sample rather than the universe, the statistical theory. It is the size of the sample rather than the size of the universe that is important.

Q. Wouldn't the size of the sample have to be related to the universe?

A. There is a certain relationship but not an absolute relationship. In other words, when you are talking about a sample of 3,000 or a sample of 300, we sometimes describe [fol. 19] it to our people in this way. We say that we have three bowls of vegetable soup and one is big and one is middle-sized and one is little, and each bowl is completely stirred up. And we ask them to sample each bowl and they use the same size spoon, that is the sample for each one. And you can get as good a sample of the big bowl with that spoon as you can of the little bowl, if it is properly stirred up. It is the size of the sample.

We have an article that we have had thousands of requests for from universities, professors, marketing research organizations since this has been written and we have reproduced this and reproduced this to bring out the point that it is the size of the sample rather than the size of the universe.

Of course, more and more our clients, you know, have had some experience with statistics. But in the early days of research you were dealing with clients that had none and you couldn't—the client is always right, too. But just to try to bring them into the picture of some idea of sampling, why, we have used articles of this type to leave with them.

Mr. Vaughn: If you are not going to offer this into evi-

dence, the document which Mrs. Corey has just referred to, which is entitled "Monthly News Letter Prepared For Western Advertising By Facts Consolidated," indicating that it comes from the research notebook, we will. Do you want to wait? I thought it was more convenient to have it [fol. 20] at the same point in the record where she referred to it.

Mr. Coyle: I think she is your witness. She is not here to be introducing your exhibits.

Mr. Vaughn: I will be happy to wait. I thought it would be useful to get the description of this document on the record as she refers to it.

Mr. Coyle: Off the record.

(Discussion off the record.)

Mr. Vaughn: I will ask that the court reporter mark this as Corey Exhibit No. 1. It is the bulletin to which Mrs. Corey just referred to.

(The document referred to was marked by the notary public as Corey Exhibit 1 for Identification and returned to counsel for the defendants.)

Mr. Coyle: Q. Mrs. Corey, have you, as a result of your studies in this area, arrived at any conclusion or opinion as to the expenditures by the consumers in the Los Angeles metropolitan area on a weekly basis at a particular shopping center or at the average shopping center? What does the average consumer spend for groceries on a weekly basis?

A. At one particular market?

Q. Yes.

A. We have never gotten into that.

Q. What do they spend at all markets?

[fol. 21] Mr. Vaughn: You mean one consumer in all the markets she shops?

Mr. Coyle: Yes.

The Witness: I don't know the average or the median. It will probably vary from \$10 a week to \$100 a week in a scale, depending upon the income and the size of the family. There is some information available along that line but I don't have anything on that myself for a particular store.

Mr. Coyle: Q. How many customers would a store the size of the Von's and Shopping Bag Stores, which you studied in your survey, have to have during the course of a week's time in order to make the gross annual sales which these stores make?

A. I don't know.

Q. You have no idea how many customers were represented by this 3,000 sample that you took?

A. No. I told you that I didn't know how many, but we could find out.

Mr. Alsop: Let her finish her answer.

The Witness: That information from Von's would be available.

Mr. Coyle: Q. Maybe Mr. Von der Ahe would know it and we will ask him tomorrow.

Assuming, until we hear from Mr. Von der Ahe, that the Von's Store would have 3,000 customers in the period of a week's time, then a sample of 260 customers, the result [fol. 22] of that would be that each interview would represent more than ten, probably ten or twelve customers, would it not?

A. Yes. We usually in training our interviewers, because we train them for a kind of honesty that is a little different—honesty is so important, and integrity. Just as an off-hand figure we tell them, "That you just remember that every home you interview, or every interview you make may be projected to 150,000 homes, and so the accuracy and the carefulness and everything that you do must be so careful."

Q. And these interviews that you made in connection with this study for defense counsel weren't made to project them to 150,000 in each interview, were they?

A. That wasn't part of the problem, no. However, it wouldn't be if you say 3,000 would be representative for a week. I don't know, as I told you, how many customers Von's or Shopping Bag, or these other stores have a day or a week. Truthfully I don't know.

Q. On Page 3, Lines 11 and 12, you say, "The results of those interviews were analyzed and tabulated in a detailed report." And then there is the word "exhibit," and the number of the exhibit is left blank. Are you there

referring to a document which is marked here Defendants' Exhibit No. 31

Mr. Vaughn: We have changed those numbers since we gave those to you, Mr. Coyle. And the reason this is blank in the affidavit, as you will find all our exhibit numbers are blank, is that we haven't decided in what sequence they will [fol. 23] be offered.

If you have a document there which in the box in the middle of the page says "A survey to determine existing competition between Von's and Shopping Bag Markets, December 1959," you have the exhibit to which Mrs. Corey refers in her affidavit.

Mr. Coyle: Q. Which day of the week has the heaviest traffic in grocery stores in the Los Angeles metropolitan area?

A. It varies, depending upon area and also depending on some of them give special stamps on special days and so on. Thursday, Friday and Saturday are all heavy days. Sunday has become heavier in some areas.

Q. Isn't Thursday generally accepted as the heaviest day?

A. I believe Friday and Saturday are heavier in most stores than Thursday—Friday and Saturday in most markets are the heaviest. There, of course, again it depends on paydays too. You know some people always do all their shopping on payday.

Q. When does the newspaper advertising generally occur?

A. They advertise their weekend specials and their food day is on Thursday. But we find that many people do not always act on it that particular day. That is an advertisement in the papers that have it on Thursday, those are [fol. 24] usually their Thursday, Friday and Saturday specials. We consider in almost anything we are doing that Thursday, Friday and Saturday are equally heavy days.

Q. Now referring to Page 1 of the study which you prepared for O'Melveny & Myers—Let me ask you a question before I refer to this. Have you found in the course of your work in this area that grocery retailing is a very competitive field?

A. Yes, I think it is a very competitive field.

Q. Have you found that most grocery stores, including the stores operated by Von's and Shopping Bag, which were the subject of this study, face competition from a number of stores?

A. Yes, I have.

Q. Do they face heavy competition from a number of stores?

A. I think so, yes.

Q. Now referring to Page 1 of your study prepared for defense counsel, and referring to the column entitled "Von's Store No. 1," does this column indicate the percentage of the persons interviewed on the Von's parking lot who stated that they buy most of their grocery shopping from a particular store?

A. 77 per cent are the people who said "Yes."

Q. Does this show that 77 per cent of the people interviewed stated that they did most of their grocery shopping [fol. 25] at that particular Von's store?

A. Yes.

Q. Then 23 per cent of those interviewed by inference would have stated that they did not do most of their grocery shopping, or they stated that they did most of their grocery shopping at some store other than Von's store?

A. Yes.

Q. Going to the next line on that column, does that indicate that 15 of the people interviewed, or 5 per cent of all interviewed, stated that they did most of their grocery shopping at the Shopping Bag store?

A. Yes.

Q. Would that indicate that—

A. It doesn't indicate which Shopping Bag. It is just "a Shopping Bag."

Q. It might be a Shopping Bag that would be some Shopping Bag in addition to the Shopping Bag store in Whittier?

A. Well, it's a Shopping Bag. It was in Whittier. The assumption was that it was a Shopping Bag in Whittier. The chances are that is a Shopping Bag in Whittier.

Q. Does the study also show that the Alpha Beta chain also represented 5 per cent?

A. Yes.

Q. Would you conclude as to this Von's Store No. 1 that

Shopping Bag and Alpha Beta were the hardest competitors of that Von's Store No. 1?

[fol. 26] A. Well, I would want to go over—We had an additional question, "Which market is your second choice for grocery shopping?" And I think that that brings out the competition. And in that—We have that table twice. We have it percentaged against all the people and we have it percentaged against the people who do most of their shopping at Von's. And this Page 2 is against those who do most of their shopping at Von's. And, let's see, Thriftmart was the second choice of 16 per cent, Alpha Beta of 13, Safeway of 12 and Shopping Bag of 10, Gateway of 5, Market Basket of 3, McDaniels and so on. And then all other stores, which probably just get about one mention, was 17 per cent. And then we had 22 per cent who said it didn't make any difference as a second choice, they either had none or they had no preference for a second store.

Q. But doesn't this indicate that of all the people interviewed, referring to Page 3, 14 per cent listed Shopping Bag as their first or second choice and 16 per cent listed Alpha Beta as their second choice?

A. I don't see the 14 per cent for Shopping Bag.

Q. If you would add the 5 per cent that is listed for Shopping Bag as their first choice and the 9 per cent who listed Shopping Bag as their second choice, wouldn't that be 14 per cent?

A. Well, you couldn't—You don't want to add the percentages if they are worked on different bases.

[fol. 27] Q. Aren't these worked on the same bases, if you add Page 1 and 3, aren't they both worked on the same bases?

A. Yes, they are.

Q. And then if you add Page 4, Page 4 is worked on the same basis, is it not?

Mr. Vaughn: I will object to the question because I don't believe it is. I think there is a smaller universe on Page 4.

The Witness: Page 4 is based on the base as Page 2. One is the first choice and one is the second choice.

Mr. Coyle: Q. What is Page 5 based on?

A. Page 5 is based on the total.

Q. So Pages 1, 3 and 5 are based on the same universe.

A. Yes.

Q. And from Pages 1, 3 and 5 would you form the conclusion that 22 per cent of all persons interviewed on the Von's parking lot in Whittier also shop at the Shopping Bag Stores?

A. Well, I would prefer to just base it on what we found.

Q. Isn't that what you found?

A. We found that 5 per cent of the people that we found on that parking lot did most of their—said they did most of their shopping at Shopping Bag. And we found that a second choice, that 9 per cent we asked mentioned Shopping Bag. But 16 per cent also mentioned—

[fol. 28] Q. Which page are you on now?

A. 3. 9 per cent.

Q. And 16 per cent—

A. Is Von's. And 9 per cent. And then we say, "Are there any other markets where you sometimes shop?" There again we had that mention of a 3 per cent. So we have Von's with 77, 16 and 3, if you want to add it that way.

Q. But Shopping Bag had 5, 9 and 7.

A. But one is a first. I think it is more specific and more meaningful to apply it just the way we presented it.

Q. But you presented it both ways. You presented it this way too.

A. But we didn't add it up, because one is a first choice, "Where you do most of your shopping?" and one is a second choice, and then the other is a different question entirely, "Are there any other markets where you sometimes shop?" And this was really just exploring where people ever shop, where you sometimes shop. So I don't think you should add up those percentages unless you want to say that they are places where they sometimes shop.

Q. Isn't that what that would show, that 22 per cent of the persons on the Von's parking lot on that given day sometimes shop at Shopping Bag?

A. Yes, sometimes. If we put it at that level.

Q. And then going over to the next column on the Whit-[fol. 29] tier store, the Whittier store shows that 5 per cent—

Mr. Vaughn: Which Whittier store?

Mr. Coyle: Shopping Bag No. 2.

Q. That shows that 5 per cent of the people on the Shopping Bag lot shop at Von's most of the time, that an additional 5 per cent list Von's a second choice——

A. That is four actually.

Q. We are on Page 3.

A. Excuse me. Three, yes.

Q. Five. And 3 per cent list Von's as a sometimes choice, which means that——

A. 13 per cent.

Q. —that 13 per cent of those interviewed sometimes and all the times, or a second choice, shop at Von's. And then going to the next——

Mr. Vaughn: No, wait a minute. Are you going to ask her the question there or are you making a statement?

Mr. Coyle: Isn't that what that indicates?

Mr. Vaughn: I will object to the question because this obviously involves double counting and is ambiguous and misstates the facts.

Mr. Coyle: Q. Does that involve double counting?

Mr. Vaughn: Can I finish stating my objection? I think it assumes facts not in evidence and contrary to the evidence, because you are counting in the Von's percentage people you counted in the Shopping Bag percentage.

[fol. 30] Mr. Coyle: I will restate my question to the witness.

Q. Do Pages 1, 3 and 5, as they relate to the people on the Shopping Bag Store No. 2 parking lot when this sample was taken, show that of all the people interviewed on that lot 13 per cent stated that they shop at the Von's store either for most of their groceries as a second choice or sometimes?

A. Yes, it does.

Mr. Vaughn: I object to the question. I think it improperly summarizes the evidence.

Mr. Alsop: When you are saying 13 per cent you said they are shopping most of the time.

The Witness: Some of the time.

Mr. Alsop: Your question would be more accurate if you limited it to "sometimes."

Mr. Coyle: Q. 13 per cent said that they shopped there sometimes, 10 per cent said that they shopped there most of the time or as a second choice, and 5 said that they shopped there all the time.

A. No. Just 5 said they shopped there as a second choice and 5 said as a first choice.

Q. And 3 said sometimes.

A. Sometimes.

Q. And the total is 13 that shop there sometimes—

A. Sometimes.

Q. —or most of the time or as a second choice.

[fol. 31] A. I say you are adding up three times.

Mr. Vaughn: Mrs Corey, wait until I finish my objection.

I object to the question as improperly summarizing the the evidence and being argumentative, and it being contrary to the evidence.

Mr. Coyle: Q. Let me clarify something. On this page 5, in answer to Question 7—look first on Page 4 where you state, "In answer to Question 1, 'Where do you do most of your grocery shopping?' " and Question 7, "Are there any other markets where you sometimes shop?" Now, directing your attention to Page 5, those nine persons who state that they sometimes shop at Shopping Bag, would those nine persons—I mean the ten persons who say they sometimes shop at Von's store, would they include the 16 persons who say they do most of their grocery shopping at the Von's store? It obviously wouldn't.

A. No.

Q. And referring to Page 3, would those ten persons include the 16 persons listed on Page 3 who state that Von's is their second choice?

A. No. As you see, we went to every extreme to try to get the complete shopping questions.

Q. You had a preceding line of questions.

A. We were trying to explore in depth as much as we could their first choice, their second choice and any other. [fol. 32] So we were leaning over backward to get the complete shopping pattern.

Q. And when you add the 16 persons on Page 1 to the

16 on Page 2, and the 10 on Page 5, there isn't any double counting, each of these persons is a different person: isn't that correct?

A. That is right. I thought I had already told you that.

Q. That is what I thought too.

Now going to the next column relating to Shopping Bag Store No. 3, does this column show that Von's accounted for most of the grocery shopping done by 5 per cent of the persons interviewed on the parking lot?

A. Yes. Would it help if I would show you how the statistical tables are read? That is what it does show.

Q. I think I know how they are read. I am just trying to get it on the record. And does Page 3 show that for Shopping Bag Store No. 3 17 per cent of the persons interviewed listed Von's as a second choice?

A. That's right.

Q. And then going to Page No. 5, does it show that 13 per cent of the persons interviewed listed Von's as a second choice as a place where they sometimes shop?

A. That's right.

Q. So that 35 per cent of the persons interviewed at Shopping Bag Store No. 3 would list Von's as a store [fol. 33] where they sometimes shopped?

A. Yes. "Sometimes" could be very infrequent, however, in the third question. It is not defined.

Q. "Sometimes" would also include anything other than the second choice. If they had a third choice it would fall within the "sometimes."

A. That's right, it could. But, as you know, the "No preference" goes up very high in Question 7. We have the people who could name no third store on the bottom line.

Q. Does that "No preference" mean that—

A. That included the people who could name no third store.

Q. But nonetheless 5 per cent of the people interviewed sometimes shop at Von's Store.

A. Shopping Bag No. 3, Store No. 3.

Q. And referring again to Page 1, with respect to Shopping Bag Store No. 2, is Von's at least the second strongest competitor of Shopping Bag Store No. 3 with respect to accounting for most of the persons interviewed, the grocery purchasers?

Mr. Vaughn: I will object to the question as being ambiguous, uncertain and unintelligible.

Mr. Coyle: If the witness understands it she can answer.

The Witness: This is on Page 1 you are asking as their second choice?

Mr. Coyle Q. No. I am asking you, what does that [fol. 34] show as to the competition between Shopping Bag and these other stores listed?

A. I am asking is this Shopping Bag Store No. 2?

Q. 3.

A. That is what I didn't get. Well, at first it shows that Shopping Bag was listed 71 per cent, which is good.

Q. That is Shopping Bag's own parking lot and you would expect that.

A. That's right. And Alpha Beta is second as a specific store. Miscellaneous stores got 9 per cent of the market and 3 per cent have no preference. 5 per cent named Von's, 4 per cent Thriftmart and 2 per cent Gateway.

Q. And that means that four more people named Alpha Beta than named Von's, and Von's was named by more people than any other store with the exception of Alpha Beta.

A. With the exception of Alpha Beta and all the little stores.

Q. Those little stores were——

A. That was 22.

Q. That was no particular store.

A. No, It was the fact that there are some little stores in the area that got 9 per cent of the business and 3 per cent had no preference.

Q. Then going over to the second choice, Page 3, does that indicate that 42 people named Alpha Beta as their second choice and 37 people named Von's as their second choice?

[fol. 35] A. And 42 named Shopping Bag.

Q. But this is again on the Shopping Bag parking lot, which would indicate again, would it not, that Von's and Alpha Beta were Shopping Bag's heaviest competitors on the basis of this study?

A. I would say that Gateway could be mentioned as a competitor with 15.

Q. They are a competitor, Thriftmart is a competitor too.

A. Yes.

Q. Is Market Basket a competitor?

A. Yes, Market Basket.

Q. Would Ralphs have been a competitor?

A. All of those stores were mentioned and 36 of them mentioned those other stores that come up even more as a competitor.

Q. So there would be a number of competitors, but at least the second strongest competitor to that particular Shopping Bag store would be Von's.

Mr. Vaughn: The second?

Mr. Coyle: The second strongest competitor.

Mr. Vaughn: I think that asks for a conclusion which is not warranted by that one table alone.

Mr. Coyle: I am asking the witness as to that particular store on the basis of that study.

Q. What does it prove?

[fol. 36] A. As I say, the first thing I think of importance is that 18 per cent named Shopping Bag as their second choice and then 18 Alpha Beta and Von's and 17 per cent named it compared with the large percentage that Shopping Bag got as the first choice. It is mentioned, yes, the 17 per cent figure is correct.

Q. And it indicates that that Shopping Bag and Von's did compete with each other, doesn't it?

A. It indicates that 17 per cent mentioned Von's as a second choice for grocery shopping in that area on the Shopping Bag parking lot.

Q. What does that show to you?

A. Simply what I say, that 17 per cent indicated Von's as a second choice.

Q. On the basis of this tabulation appearing on Pages 1, 3 and 5 with respect to Whittier, are you able to form any conclusion as to whether there was much or little competition between these particular Von's and Shopping Bag stores?

A. Frankly I am a marketing research expert in the techniques of doing these surveys. I think that as to the amount of competition I wouldn't say that it was a great

deal of competition between one store and another. In fact looking at it it would seem to me that that was an area in which it would call for more stores to build up more competition because of the heavy Shopping Bag penetration in three. And so many of the stores weren't mentioned at all, you see.

[fol. 37] Q. You mean there is an area where there was not much competition?

A. I would say that Shopping Bag did not have much competition in this area. Because we go back—What did they mention on Page 1? Shopping Bag was 71 per cent and then it was mentioned 18 per cent, and then it was mentioned 8 per cent. And the number of stores mentioned first on Question 1, "Where do you do most of your grocery shopping?" there were very few mentioned. It would seem to me that that is an area where the competition was fairly light.

Q. The competition is weak in Whittier.

A. It was light. There was not much competition in that area.

Q. Does Von's have much competition in that area?

A. Well, Von's was not in that area.

Q. In Whittier, I mean. Does the Von's Store in No. 1 in Whittier have much competition?

A. It has a little more, I would say. While it has 77 per cent who do most, but there are more stores mentioned in Questions 1 and 4. Only a few more, but there are more stores mentioned in the Von's Store No. 1 than in the Shopping Bag No. 3.

Q. Does Shopping Bag No. 2 have much competition in that area?

A. The other is high, the 19 per cent.

Q. Does that indicate competition?

[fol. 38] A. Yes, it indicates competition of a group of little stores. Its preference is not so great either at Shopping Bag in No. 2.

Q. Would this table indicate that the Von's-Shopping Bag and the two Shopping Bag stores in Whittier had so little competition that they could fix their prices independent of their competition?

A. I think I am being asked about things that I was not asked to study. I would just say that I don't think there is any area that stores can fix their prices without

thinking of competition. I don't know any area, as we mentioned the mobility and so—

Q. Yes.

A. —when people, as far as I know, when their prices are more that it is because of their service or—I would say no.

Q. Your conclusion would be that these stores, the Von's and Shopping Bag stores in Whittier could not fix their prices without considering the prices charged by these other stores listed here as being second choices or sometimes choices or the consumer?

A. This is not in the scope of this study at all, sir, as you know. It is not in the scope of this study. We didn't get into the subject of price at all.

Q. I am just trying to ascertain what you mean when you say that there is little competition.

[fol. 39] A. I would imagine on the map there were not as many stores in that area. I am not talking about price. I am talking about the location of stores.

Q. You are talking about the number of stores?

A. Yes.

Q. But these stores that are listed here are competitive with each other?

A. They were competitive, yes, to the extent in which they are mentioned here as the store which—As I say, we go back to the wording of the question, "Where did you do most?" and "What is your second choice?" and "Are there any other markets where you sometimes shop?" That is the way that I would like to prepare it, since this is just repetitions of what we presented in the tables. To get it in the record I would be glad to go over this as fast as we can.

Q. I have to ask any questions which I feel are necessary here.

With respect to the Downey store, Shopping Bag Store No. 7, referring to Page 1 of your study—

Mr. Coyle: Let us go off the record for a minute.

(Discussion off the record.)

(A short recess was taken.)

(Whereupon, at 12:40 P.M., Wednesday, May 22, 1963

an adjournment was taken until 9:00 A.M., Friday, May 24, 1963.)

[fol. 40] (Whereupon, at 9:30 A.M., Friday, May 24, 1963, the taking of the deposition of Dorothy D. Corey was resumed at the same place, the following persons being present:)

Appearances of Counsel: Same

.

[fol. 41] DOROTHY D. COREY, having been previously duly sworn, deposed and testified further as follows:

Mr. Coyle: Would you mark this map showing the area in the vicinity of Carson Street and Woodruff Avenue as Corey Exhibit No. 2 for Identification.

(The document referred to was marked by the notary public as Corey Exhibit No. 2 for identification and was returned to counsel for the plaintiff.)

Direct examination. (Continuing)

By Mr. Coyle:

Q. Mrs. Corey, I refer you to Paragraph 4 on Page 10 of your affidavit in which you discuss the competition which Von's would face with a store in the vicinity of Woodruff and Carson Street, in which you state that Von's was an insignificant factor in this area served by Hiram's, Iowa Pork Shop, McCoy's, Boy's, Thriftmart, U-Tel-Em, Market Basket, Greater Central Market, Alpha Beta, Safeway, Shorty's, Cole's, F & W Market, Royal Market, McDaniel's, Clark's, Plowboy's Market, Jim Dandy, Ralphs' and Raisin, among others. I show you this map which has been marked for identification as Corey Exhibit No. 2 and ask you if it is a map which shows the area in the vicinity of Carson [fol. 42] Street and Woodruff Avenue.

A. Yes.

Q. Does the green star on the map locate the intersection of Carson Street and Woodruff Avenue?

A. Yes.

Q. I ask you whether or not the red numeral 2 indicates the location of the Iowa Pork Shop.

A. I assume it does. I would have to refer back to the—

Q. How far would that Iowa Pork Shop be from the green star? I think there is a scale on the other side of the map.

A. This scale is two miles.

Mr. Vaughn: Do you have a ruler?

Mr. Coyle: I believe the green circle indicates two miles.

A. If it does it would seem to be about two and a quarter miles. I don't have a ruler but it would seem to be about that.

Well, it's about two and a quarter miles.

Q. Referring to the number 19 on that map, which I understand is the location of Ralphs, how far is that from the star?

A. It's about four and a quarter.

Q. And that is four and a quarter in a straight line, and on the highway it would be somewhat longer than that, would it not?

[fol. 43] A. I suppose, depending upon how you draw that.

Q. And referring to No. 20, which is the location of the Raisin Market, how far is that from the star?

Mr. Vaughn: I will object to the question as assuming facts not in evidence, namely that this is the Raisin Market. I will object to the former questions insofar as they assume that this map indicates the location of any particular market, on the ground that it assumes facts not in evidence.

Mr. Coyle: I am stating that that is the location, or that I have been informed is the location of the Raisin Market.

Mr. Vaughn: I will stand on the objection.

Mr. Coyle: If Mrs. Corey wants to check the map later on with her study she can.

The Witness: This is about four miles.

Mr. Coyle: Q. Is that in a different direction than the Ralphs Market which you previously looked at?

A. What number did you say was Ralphs?

Q. No. 19.

A. Yes, it is in a slightly different direction.

Q. And referring to No. 10, which I have been informed and believe to be the Safeway Market, how far is that?

Mr. Vaughn: The same objection.

The Witness: It's about three miles.

Mr. Coyle: Q. Now referring to No. 8, which is the location of the Greater Central Market—

Mr. Vaughn: The same objection.

[fol. 44] The Witness: About the same distance, about three miles.

Mr. Coyle: Q. These are some of the stores which you state in your affidavit would be competition to a Von's store located at the intersection of Carson Street and Woodruff Avenue, are they not?

Mr. Vaughn: I will object to the question as assuming facts not in evidence and contrary to the evidence. The affidavit says, "That this customer survey shows Von's was an insignificant factor in an area served by—" and listing a number of chains. It does not say that Von's would be or was in competition with all or any of these stores.

Mr. Coyle: These are stores that you found would serve the customers in the vicinity of Carson Street and Woodruff Avenue, are they not?

A. I believe that we surveyed an area around that, and of course you always have overlapping. For example, if someone is living here they are much closer to Store 10. If they are within a two-mile radius here they are very close. So you have this overlapping situation in any consumer study. And if they lived in this area they would be closer to Store 15.

Q. And all of the stores would be serving customers residing in that two-mile area?

A. Not all of the customers, probably.

Q. But some of the customers?

A. But it always happens that way.

[fol. 45] Q. They would be competitive factors in that way?

A. It always happens that way, that customers in any particular area can go in any direction and they don't all live in one spot.

Q. And they are served by the stores that surround them?

A. Usually they are served by the stores that surround them, yes.

Mr. Coyle: Would you mark this as Corey Exhibit No. 3

for Identification, which is a map that shows the area in the vicinity of Santa Gertrudes Avenue and Whittier Boulevard.

(The map referred to was marked by the notary public as Corey Exhibit No. 3 for Identification and was returned to counsel for the plaintiff.)

Mr. Coyle: Q. Mrs. Corey, I show you Corey Exhibit No. 3 for Identification and ask you whether it shows the area in the vicinity of Santa Gertrudes Avenue and Whittier Boulevard?

A. Yes, it does.

Q. Referring to the green star on that map, I ask you whether or not that plots the intersection of Santa Gertrudes Avenue and Whittier Boulevard.

A. Yes, I believe it does. It is a little hard for me to see but I believe it does. This is Whittier and this must be Santa Gertrudes.

[fol. 46] Q. I refer you to the red dot marked No. 10 and I am informed that that is the location of the Ralphs' store. I ask you how far that is from the green dot.

Mr. Vaughn: I will object to that on the ground that it assumes facts not in evidence and move to strike the question as it contains testimony.

The Witness: This is the same scale. About three and a half miles, I'd say, or three miles.

Mr. Coyle: Q. That measurement of three miles, is that the measurement between the intersection of Santa Gertrudes and Whittier Boulevard and Philadelphia and Comstock Streets?

A. No. It's over three, I would say. The dot, I can't tell exactly where it is.

Q. But it is over three miles?

A. It is over three miles, maybe three and a half.

Q. Is that the intersection of Philadelphia and Comstock?

A. On 10?

Q. Yes.

A. It looks to me as if it is Harley and Pickering, but I can't tell, Bailey.

Q. Do you know the location of the Ralphs Market that you referred to in Paragraph 5 of your affidavit?

A. Well, I can't recall the exact location. Did you say 10 was a Ralphs?

[fol. 47] Q. Yes.

A. There is Pickering and one called Comstock. Yes, there is Comstock. What is the other one?

Q. Philadelphia.

A. Oh, yes, here is the spot. Yes, that is the location.

Q. And that is the location of the Ralphs' store?

A. It was, yes.

Q. Referring to the dot marked 13, I ask you whether or not that plots 424 East Philadelphia.

A. Well, it would seem to from the spot, yes.

Q. Is that the location of Orcutt's Whittier, which you referred to in Paragraph 5 of your affidavit on Page 10?

A. I believe it was at that time.

Q. Would you tell us how far that is from the green star?

A. Well, it's over three miles.

Q. Now referring to Corey Exhibit No. 2 for Identification, I ask you whether No. 19 is 10th and Cherry.

A. Yes, it's 10th and Cherry.

Q. Is that the location of Ralphs Market that you referred to in Paragraph 4 of your affidavit?

A. I believe it is.

Q. Now referring to No. 20 on that map, is that the intersection of Orange and Waldron?

A. It seems to be the intersection of Orange and Wardlow.
[fol. 48] Q. Was that the location—yes, Wardlow. I am sorry—of Raisin's that you referred to in your affidavit?

A. Yes, I believe so.

Q. Referring to No. 10, is that the intersection of Bellflower and Cedar?

A. Yes.

Q. And is that the location of the Safeway which you referred to in your affidavit?

A. Yes.

Q. Referring to No. 2, on Corey Exhibit No. 2 for Identification, is that the intersection of Palos Verdes and Stearns?

A. Yes.

Q. Is that the location of the Iowa Pork Shop that you referred to in Paragraph 4 of your affidavit?

A. I believe so.

Q. Referring to No. 8 on Corey Exhibit No. 2, is that the intersection of Artesia and Bellflower?

A. Yes.

Q. Is that the location of the Greater Central Market that you referred to in your affidavit?

A. I believe so.

Q. Could you tell us how far that No. 8 is from the green star?

A. It is, I would say, about three miles.

[fol. 49] Q. You stated that you made these surveys in the vicinity of Carson and Woodruff Street with respect to the survey discussed in Paragraph 4 of your affidavit and the vicinity of Santa Gertrudes Avenue and Whittier Boulevard in Paragraph 5 of your affidavit. How wide an area did you use to make this survey?

Mr. Vaughn: May I show her the report, Mr. Coyle?

Mr. Coyle: Yes.

The Witness: We say in the report that the survey was made within a three-mile radius around the intersection of Santa Gertrudes Avenue and Whittier Boulevard.

Mr. Coyle: Q. Is it your normal procedure to take a three-mile radius when you make surveys of this type?

A. If there is a normal procedure it is our normal procedure to discuss the problem with the client and define the problem and adapt the universe that will solve his problem. It would depend upon whether we were working in a very highly populated area, a widespread area, physical boundaries and so on.

Q. Was this area that you made this survey in a heavily populated area, or these areas?

A. I don't think it was in—— It wasn't what I would call a heavily populated area in '56.

Q. Was it an average area in '56?

A. It varied. There were wide spaces of open territory in '56.

[fol. 50] Q. Are there still wide spaces of open territory?

A. Well, I haven't driven around it recently. But I could have the block statistics run. We have them on IBM cards and are trying to get more from the Census, but it is so hard to get it.

Q. But from your own experience you wouldn't know whether——

A. It has grown, I know that. But I don't know whether it is heavily populated today or not.

Q. In making this survey, which you made for O'Melveny & Myers, and which you discussed commencing on Page 3 of your affidavit, you state that 3,000 interviews were made. I think that Mr. Von der Ahe yesterday testified that his stores would have between three and six thousand customers in a week's period. Now, this survey was made for 11 stores. What would be the approximate universe? Could you give us an approximate universe that these 3,000 interviews would represent?

A. No, I couldn't because I don't know the universe of Shopping Bag. And three to six is a big— You mean you are talking about the population?

Q. Yes. I am trying to find out what each of these interviews would represent. If it were 3,000 customers per store on an 11 store basis how many families would these interviews represent?

Mr. Vaughn: I will object to the question as being confusing and ambiguous. If you take it store by store you [fol. 51] might have something. But to take 11 stores and add them all together and add all the interviews together, I don't think you get anything.

The Witness: We didn't add them together in the report for the simple reason that we were studying area by area and store by store.

Mr. Coyle: Q. All right. We will do it store by store then. With respect to Store No. 1, that is Von's Store No. 1, you or your report indicate that you made 341 interviews with respect to Von's Store No. 1. If that Von's store had 3,000 customers would each of these interviews represent 10 customers?

A. Yes.

Q. And 20 if it had 6,000?

A. That's right.

Q. So each of these interviews would represent between 10 and 20 customers.

A. Yes. I told you the other day that is not the way we arrive at a sample. It is the size of the sample and not the universe that counts, and in a case like this the number of customers has nothing to do with it.

Q. With respect to Shopping Bag Store No. 2 you took 294 interviews.

A. Yes.

Q. In this case it would represent a little more than 10 customers on this minimum figure of 3,000?

[fol. 52] Mr. Vaughn: That assumes facts not in evidence, that that is a minimum figure.

The Witness: I have no idea about what the number of customers that Shopping Bag Store No. 2 had in a week or a day. I don't know.

Mr. Coyle: Q. I show you a map which is designated "Area 2, Von's, 151 Brookhurst, Garden Grove Shopping Bag, Brookhurst and Katella, Garden Grove," and ask you if it's an exhibit which you prepared or had prepared for O'Melveny & Myers for use in this case.

A. Yes.

Mr. Vaughn: I will object to the question. It is not, because there are some lines on there that Mrs. Corey didn't put on.

Mr. Coyle: The overlay Mrs. Corey did not put on.

Mr. Vaughn: That's right. And neither did O'Melveny & Myers.

Mr. Coyle: Q. Referring to this red dot, the northernmost red dot on the map, could you state what the intersection of that dot is?

A. It seems to be Orangethorpe and Hawthorne.

Q. Could you tell me how far that red dot is from the red star which indicates—

A. I think these are the same maps. They look like the Security map.

Q. The red star which indicates the Von's store.

[fol. 53] A. It would seem to be about five miles.

Q. Is that a single red dot or is that more than one red dot?

A. I don't know now. It may be just a single red dot.

Q. It could be two red dots?

A. It could be, but maybe just a single red dot.

Q. Would that indicate that 10 or 20 families if it's a single dot, or 20 or 40 families if it's a red dot would shop—

A. I think we have it on the tape.

Q. Why don't you check on your tape and see how many dots this is.

A. I don't see it. I can't find it. Here it is, Brookhurst and Orangethorpe, four.

Q. Does that indicate four red dots?

A. At Brookhurst. Frankly, I can't find it.

Q. Do you find Brookhurst and Orangethorpe?

Mr. Vaughn: On the map?

Mr. Coyle: On the map, yes.

Mr. Vaughn: May I help her?

Mr. Coyle: Yes.

The Witness: Let us see if it is Brookhurst. It says "Hawthorne." Maybe there is Brookhurst—

Mr. Vaughn: It appears to me, at least, that that is Brookhurst and later in another half a block it changes to Hawthorne. But that is Brookhurst and Orangethorpe.

[fol. 54] Mr. Coyle: Q. Would that be four families—four interviews that were located in that vicinity?

A. Orangethorpe at Brookhurst are four.

Q. That would be four interviews and each of those interviews would represent between 10 and 20 families, would they not?

Mr. Vaughn: I will object to the question as assuming facts not in evidence.

Mr. Coyle: Q. Do you know how many families each of those interviews would represent?

A. No, because, as I told you, I don't know how many customers.

Q. It would represent just four customers, would it not?

A. Yes, it would represent more than four.

Q. And depending upon the total number of customers at that particular Von's store it would represent perhaps as many as 20 customers.

Mr. Vaughn: I will object to the question as being speculative.

Mr. Coyle: In making your study in the Garden Grove area you made 350 interviews, according to the report. If that Von's store had 6,000 customers each of those interviews would represent 15 customers, would they not?

Mr. Vaughn: I will object to that on the grounds that it assumes facts not in evidence and that it is argumentative. [fol. 55] Mr. Coyle: She is an expert witness. I am asking her a hypothetical question.

Mr. Vaughn: You are also asking her an argumentative question.

Mr. Coyle: I am asking her how many it would represent.

Q. How many would each interview represent if that particular Von's store had 6,000 customers?

Mr. Vaughn: The same objection.

Mr. Coyle: I am asking her anyhow.

Mr. Vaughn: I realize that and I am objecting anyhow. She may answer.

The Witness: Based on sampling, of course, it would never represent an exact number because there is always a certain plus or minus in any sampling process. But it would probably—But it would certainly represent more than four.

Mr. Coyle: Q. And quite a few more than four. The Von's store, you know, would have quite a few customers more than 350.

Mr. Vaughn: I will object to the question as being argumentative.

Mr. Coyle: Q. Would you know that the Von's store would have quite a few more than 350 customers?

Mr. Vaughn: I will object to the question as calling for a conclusion, "quite a few more than."

Mr. Coyle: Q: Would you know that the Von's store [fol. 56] would have more than 350 customers?

A. Well, I would assume they would. We didn't make a census, we made a sampling.

Q. You observed the store, didn't you?

A. The interviewers did,

Q. And on the basis of observing the store and making the 350 interviews can you draw any conclusion as to whether the Von's store had more than 350 customers?

A. I would say they have more than 350 customers, yes.

Q. Would say they have ten times more than 350 customers?

A. Well, yes.

Q. Fifteen times more?

A. I don't know.

Q. So they would have at least ten times more than 350. Would that indicate then that the four interviews would represent at least 40 customers?

Mr. Vaughn: I object to the question—

Mr. Coyle: I am asking her if it would.

Mr. Vaughn: Let me make my objection, if I may, for the record.

Mr. Coyle: Make your objection.

Mr. Vaughn: I will object to the question as being argumentative, calling for a conclusion and being speculative.

Mr. Coyle: Q. Now answer the question.

A. Well, Gentlemen, I don't know whether—It could [fol. 57] represent 40, it could represent 35 and maybe it would represent 45.

Q. Or 60?

A. No, I wouldn't say it would represent 60.

Q. Would the customers living in that area and patronizing the Von's store have to pass other stores on the way to the Von's store?

Mr. Vaughn: You mean living in the area of Brookhurst and Orangethorpe?

Mr. Coyle: Yes.

The Witness: I think they would. They would have too. They could drive around them but you would think that normally they might.

Mr. Coyle: Q. Normally they would pass other stores.

A. Yes.

Q. Now referring to this intersection, could you state what that intersection is?

A. It seems to be Bolsa and Adams. It also seems to change its name up here to Stanton.

Q. Could you tell me how many Shopping Bag customers you located in the vicinity of Bolsa and Adams?

A. We have one at Highway 39 and Bolsa.

Mr. Vaughn: I think this is Highway 39 as well.

Mr. Coyle: Q. Do you just have a single dot there?

A. Yes.

Q. How far would that be, that single dot? How far [fol. 58] would that be from the green star?

A. It seems about five miles.

Q. Then going over to this green dot, what intersection is that?

A. That is the intersection of 5th Street and Jackson.

Q. How many green dots do you have there?

A. I don't see it here but it looks to be one.

Q. How far is that from the green star?

A. It is about the same, about five miles.

Q. Would customers patronizing the Shopping Bag store from that area have to pass other stores normally to get to the Shopping Bag store?

A. I imagine there are stores in the area, yes.

Q. Referring to this green dot over here, would you locate that intersection?

A. It looks like Memory Lane and Bristol.

Q. How many interviews does that represent?

A. This one?

Q. Yes.

A. It's a little larger. It could be two.

Q. Could it be more than two?

A. I don't think it is. It could be one, it could be two.

Q. Calling your attention to this intersection up there that we discussed first, which represented four interviews, is that dot down there any larger or any smaller?

[fol. 59] A. To me it seems a little smaller.

Q. It is very difficult to tell from these dots how many interviews?

A. Yes.

Q. How far is that from the green star?

A. That is about the same, about five miles.

Q. Would those customers have to pass other stores normally to get to the Shopping Bag store?

A. I would say so.

Q. Now referring to the cluster of red dots around the green star indicating Von's, do those dots indicate Von's customers that live in the vicinity of the Shopping Bag store?

A. Yes.

Q. And how many of those red dots make up that cluster of red there?

A. Twenty-two.

Q. Would each of those interviews represent maybe 35 or maybe 45 families, according to your previous testimony?

A. I don't know about that.

Q. Would you know how many customers were represented by those 22 dots?

A. No, I don't. Twenty-two, at least, of course.

Q. And maybe each of them represented as many as ten customers?

A. That's right.

Mr. Vaughn: I will object to the question as being [fol. 60] confusing and calling for a conclusion. The word "represented" is being used, I think, in a non-statistical sense here.

Mr. Coyle: Q. When you make these interviews don't each of these interviews represent something more than just a single interview?

A. We usually use the word "projectable." Whether it is projectable or not.

Q. Are these projectable, these interviews?

A. Yes, they are projectable.

Q. How many would these 22 interviews project to?

A. As I say, they might project to ten. I don't know the total universe, I told you that, and that is why I can't testify to that.

Q. It might project to more than ten or less than ten but you say that ten is about what you think they project to?

A. That would be more——

Q. It would probably be conservative, wouldn't it?

A. I don't know.

Q. Now referring to this overlay which is now attached to this exhibit, which you didn't make, would you say that that overlay, on the basis of your study, would accurately plot out the market area served by these two stores?

A. I don't know. You mean back at that time in 1956?

Q. Yes. Based upon your interviews.

[fol. 61] Mr. Vaughn: I will object to the question. The map doesn't purport to show and doesn't show the trad-

ing area of the two stores. It shows the trading area of each store. You have wide open spaces here covering most of it.

Mr. Coyle: I am asking Mrs. Corey on the basis of her interviews would she be able to plot the area served by the two stores on the basis of her interviews.

Mr. Vaughn: I think she has. The dots show the areas.

Mr. Coyle: I am asking her.

The Witness: It would depend upon the problem that you were solving. You are including, as you say, a great deal of scattered territory in here.

Mr. Coyle: Q. But there are customers of both stores located even outside that area, are there not?

A. Well, very scattered customers.

Q. But isn't that what determines the trading area?

A. This study was given as of a certain day and as of a certain day someone may be traveling through, maybe going from work and what have you, as of a certain time. I think that the map itself is more indicative of where the customers come from than this line. It shows the cluster where the customers are clustered.

Q. This study of yours was prepared to solve a particular problem, was it not?

A. It was— Yes, it was done to approach a particular [fol. 62] problem, to bring up some answers to particular problems.

Q. What was the problem it was prepared to answer?

A. I believe we stated in here, in our report.

Q. Would you refer me to the specific place?

A. That we were requested to conduct a survey to determine the amount of competition existing between Von's and Shopping Bag Markets at those locations in close proximity to each other.

Q. And those locations were in close proximity to each other?

A. They were the closest of all the Von's and Shopping Bag stores.

Q. These were the only Von's and Shopping Bag stores that you studied for the purpose of determining the competition between them?

A. Yes.

Q. And you made no findings as to any of the other stores?

A. No.

Q. Would a store with three and a half million dollars annual sales have normally in the Los Angeles area a larger draw area than a store with two and a half million dollar sales?

A. Well, I wouldn't say. It would depend on the location of the store.

[fol. 63] Q. If at a given area a store had sales of three and a half million dollars would it have a larger draw area than a store with two and a half million dollar sales located across the street from it?

Mr. Vaughn: I object to the question as being speculative. So many factors come into that that you haven't eliminated them.

Mr. Coyle: This is a hypothetical question.

Mr. Vaughn: It is an improper hypothetical question.

Mr. Coyle: I am asking the witness if she can answer that.

Q. Could you answer this hypothetical question?

Mr. Vaughn: Do not answer until I finish stating my objection, Mrs. Corey, hopefully without interruption.

You are asking her a hypothetical question and not including all of the factors that go into a result such as how much each customer spends at the store and the like, and I object to it as an improper hypothetical question.

Mr. Coyle: Q. Would the Von's store on this map have a larger draw area than the Shopping Bag store?

A. You mean just depending upon geography alone?

Q. On the basis of the fact that the Von's store had a three and a half million dollar annual sale and Shopping Bag two and a half million.

Mr. Vaughn: Doesn't that assume facts not in evidence?

Mr. Coyle: This is a hypothetical question.

[fol. 64] The Witness: We have a hypothetical question that Von's has a volume of what?

Mr. Coyle: Q. Three and a half million.

A. And that Shopping Bag has—

Q. Two and a half million.

Mr. Vaughn: The same objection.

The Witness: I wouldn't say that it does.

Mr. Coyle: Q. That wouldn't indicate that one has a wider draw area than the other?

A. Not necessarily. It might or might not. You couldn't answer it just on that. You couldn't possibly answer it on that basis.

Q. What other factors would you have to know?

A. Well, I went into a great many of the factors the other day, it is in the testimony, that it would depend on the store, the amount that they sell. As you remember, I mentioned the quality of the meat, one may have a good parking area the other may not. That one may be on a better side of a wide avenue and that one may have better management. The lost sale, not keeping a good inventory, is very important. And one may stock—may pay better attention to the brands. There is the arrangement of the store, the areas. All of those things go into the success of a store or increased sales. I don't know. One may have a liquor department and one may not. And one may have a good meat department. One may be heavy on vegetables. It is not just the groceries alone that depend upon the volume. [fol. 65] One may be open longer hours. One might be open on Sundays and the other might not. All of these things have to be considered. It is not just the one factor.

Q. So would it be your conclusion then that there is no hard and fast rule as to the draw area of a given store?

Mr. Vaughn: I object to the question using the phrase "hard and fast rule." Relating to what?

Mr. Coyle: Q. That there is no one criterion that determines the draw area of a given store.

A. Well, that is an entirely different question than the one you asked me.

Q. What determines the draw area of a given store?

Mr. Vaughn: What do you mean "determines"? I don't understand it.

Mr. Coyle: Q. What factors do you have to take into consideration to arrive at the draw area of a given store?

A. Well, I mentioned some of them. However, if you are just talking about geography, if one store is in Garden

Grove and the other store is in San Fernando, certainly geography has a part. The people in San Fernando aren't going to go to Garden Grove to do their shopping. So that could determine the draw area on that. But these stores are relatively close together. Or when I am talking about stores that could be relatively close together then I don't think geography is the only thing.

[fol. 66] I did mention one factor there, the fact about a big avenue or freeway, or something that people might not want to cross, or there could be a natural boundary such as a river bed or something that would affect it. But from looking at the map here it doesn't seem to me that there is any natural boundary there that would affect the draw area.

Q. There are no barriers on that map that you see that would affect the draw area.

A. I don't see any between these two stores.

Q. Is there a railroad shown on that map?

A. Yes. This goes down on this side.

Q. Would that railroad affect the draw area there?

A. I would frankly have to see—I don't know how it is crossed over.

Q. Based upon those interviews that you conducted would you conclude that it has affected the draw area?

A. Well, we have some coming down Chapman, which is evidently a direct line, as you can see. There is a direct line here on Chapman.

Q. And are people crossing that railroad to get to those stores?

A. They evidently go up to Chapman and then go over. There is a way of going.

Q. Isn't there generally a way of going across the railroads in this area?

A. There is.

[fol. 67] Q. Railroads are not much of a barrier in this area, are they?

A. I wouldn't say that railroads are our big barriers. Maybe freeways are bigger barriers. But generally there is a way of doing anything, but it may not be the most convenient way. And convenience is an important factor.

Mr. Coyle: I am through now.

Mr. Vaughn: I have a few questions.

Cross-examination.

By Mr. Vaughn:

Q. Mr. Coyle has referred to your survey of the vicinity of Carson Street and Woodruff Avenue. I show to you a document entitled "Consumer Shopping Habits in the vicinity of Carson Street and Woodruff Avenue, Lakewood, for Von's Grocery Company, February 1956." Is that a report which your organization prepared, Mrs. Corey?

A. Yes.

Q. In making that report did you confine your interviews to the immediate vicinity of Carson Street and Woodruff Avenue?

A. Well, according to our report the survey was made between a three-mile radius around the intersection of Carson Street and Woodruff Avenue.

Q. That means that you would go three miles in all [fol. 68] directions in order to find those who you would interview; is that correct?

A. That's right. We described the areas bounded on the north by Artesia Street and on the south by portions of the Pacific Coast Highway and the most southern limits of the Los Angeles County line. The east and west boundaries are roughly the Los Angeles County line and the City of Lakewood's western limits, respectively.

Q. Was this a survey to determine consumer preference for particular stores in the area surveyed?

A. Yes.

Q. I refer you—I suppose this is Page 2 of your report. Am I correct in saying that you asked for consumer preference in meat, vegetables, groceries and fresh fish with regard to various markets; is that right?

A. Yes. The question was, "Where do you generally buy your meat?" "Where do you generally buy your fresh fruit and vegetables?" and "Where do you generally buy your groceries?"

Q. Would you tell me what percentage of the customers asked "where do you generally buy your groceries?" responded Iowa Pork Shop?

A. Iowa Pork Shops on groceries, 4.8.

Q. How about Ralphs?

A. .2.

Q. Have you any way of knowing from the information [fol. 69] now before you whether those .2 per cent of the persons interviewed lived in this area?

A. Not exactly where they lived. They lived within the three-mile radius.

Q. They could have lived three miles away from Carson and Woodruff in the direction of the Ralphs' store; isn't that right?

A. That's right.

Q. How about with respect to Raisin Market, how many said they generally bought their groceries at Raisin's Market?

A. .2.

Q. How about Safeway?

A. 2.4.

Q. How about Greater Central?

A. 8.9.

Q. If a store has a two mile draw area and one of its competitors four miles away has a two mile draw area, are they in competition, in your opinion, Mrs. Corey?

A. They would be more in competition by the people who lived on the two miles from either one, that line of people. I mean this is a completely overlapping situation. You don't draw a boundary and then stop. I mean it's an overlapping situation. So they would be in competition with the people who live closer to one store or the other, and the competition would vary.

Q. So that a store with a two mile drawing area could [fol. 70] be in competition with a store three and a half or four miles away from it; isn't that right?

A. That's right.

Q. Mr. Coyle also referred you to the vicinity of Santa Gertrudes Avenue and Whittier Boulevard. I now show you a report called "Consumer Shopping Habits in the vicinity of Santa Gertrudes and Whittier Boulevard." Is this also a report prepared by your organization, Facts Consolidated?

A. Yes, that's right.

Q. What area did you conduct your interviews in in this instance?

A. That was within a three-mile radius around the intersection of Santa Gertrudes and Whittier Boulevard.

Q. That is three miles in all directions; is that correct?

A. In all directions, yes.

Q. Again what question did you ask people interviewed?

A. We ask again, "Where do you generally buy your meats?" "Where do you generally buy your fresh fruits and vegetables?" and "Where do you generally buy your groceries?" And then the reason that fish was on there, we later on asked, "Do you ever buy fresh fish, and if 'Yes,' where do you buy it?" So it is a smaller sample of whoever buys fresh fish.

Q. What percentage of those persons contacted or interviewed said they generally bought their groceries at Ralphs?

A. Four per cent.

[fol. 71] Q. What percentage said they usually bought their groceries at Orcutt's Whittier?

A. 2.5.

Q. I take it that you are again unable to tell us from the information before you where those particular customers or particular persons resided in that area.

A. Yes, that's right.

Q. They could have resided three miles away from the——

Mr. Coyle: You are testifying, Mr. Vaughn.

Mr. Vaughn: Q. Is it possible that they could have resided——

Mr. Coyle: You are still testifying.

Mr. Vaughn: Q. —three miles away from Santa Gertrudes Avenue and Whittier Boulevard from Ralphs or Orcutt's Whittier?

A. Yes, within three miles. Up to three miles.

Q. Are you a member, Mrs. Corey, of any professional societies or associations?

A. Well, I am a member of the American Marketing Association, I am a member of the American Statistical Association, I am a member of the American Association for Public Opinion Research, and our firm is a member of the American Management Association, and I am a member of some advertising clubs. I think that's about it.

Q. Has your firm or have you ever conducted any surveys to determine the effectiveness of food advertising in

[fol. 72] metropolitan papers as compared to other types of newspapers?

A. Effectiveness, yes, and more readership rather than effectiveness.

Q. You have conducted your surveys to determine what number of people read particular newspapers?

A. Yes. And what they read them for.

Q. Do you have an opinion, Mrs. Corey, based upon your research, as to what type of newspaper carrying food advertising is most often read for the purpose of reading food advertising in the Los Angeles metropolitan area?

A. I would say that the paper that we call the controlled circulation newspaper that comes out on Thursday morning, some of them are published twice a week, some three times a week, there is even one published four times a week, are read more for food advertising than any other type of paper.

We did a great deal of work in media research and we made a study called "The Penetration Efficiency of Newspapers." We made three of those covering all the newspapers in Los Angeles and Orange Counties. This includes the metropolitan papers, the daily community papers and the weeklies. There are almost 400 papers included in this study.

And in working with the newspapers, one group called the Los Angeles suburban newspapers, Los Angeles area suburban newspapers, LOSAN we call it, we learned that [fol. 73] they have 144 markets advertising in their newspapers.

Q. What is a market?

A. A food market.

Q. I see.

A. One hundred forty-four different food advertisers in their newspapers, which I would say represent about one-third of the control circulation newspapers.

Q. Where are these controlled circulation newspapers distributed? Is one paper distributed across the metropolitan area or how is that done?

A. No. Some of them have very small areas, some have larger ones. But they are designed to serve the immediate community.

For example, one group called the Herald American have

13 different stores, so they can be localized to serve each area such as La Mirada, such as West Compton, such as East Compton. They are very, very local. The purpose is to give local news and serve the local advertising.

Q. Have your surveys showed, Mrs. Corey, that more or fewer people read food advertising in these types of papers than in metropolitan newspapers?

A. The food advertising is read more in these papers than in any other type. Not only the metropolitan but in the community newspapers such as the Long Beach and Pasadena, Glendale News Press and so on. These are—Some of them are—These are the newspapers designed [fol. 74] primarily to serve the food markets. In fact their problem is to show that people read them for something else other than food. Because when they go out to sell advertising the advertiser says, "We know everybody uses them for shopping for food but we don't know that they use them for something else." And that has been their problem, to show that they do read them for other things other than food.

Mr. Vaughn: No further questions.

Redirect examination.

By Mr. Coyle:

Q. How many people read these controlled newspapers for food advertising?

A. Well, I would say that it varies a little bit by area within the County. On the whole I would say that about 85 per cent of the housewives in Los Angeles and Orange read them for food advertising.

Q. What percentage of the housewives do the shopping in Los Angeles and Orange Counties?

A. When I say "the housewives," I also mean the men. The people who do the shopping—people who shop read them for food advertising.

Q. What percentage of the households in Los Angeles and Orange Counties get one or the other of the metropolitan newspapers?

[fol. 75] A. One or the other of the metropolitan newspapers? I am calling on my memory, and I deal with figures

so much of the time that I don't try to memorize them. I try to go back and I may have to correct myself. But I would say about—You are talking about the dailies, not the Sunday?

Q. Yes. Either at a newsstand or have it delivered at their home, one or the other.

A. I would say that it is about 45 per cent.

Q. 45 per cent of the people in the Los Angeles metropolitan area?

A. Yes.

Q. What is the circulation of the Times?

A. I don't remember what it is. It is not all in Los Angeles and Orange County, of course. But I could get that figure. It wouldn't be difficult for me to get you the circulation of all the papers. I do have them in my office, the Audit Bureau circulation figures.

Q. Is it necessary for a chain like Safeway to advertise in the metropolitan papers?

A. It wouldn't be.

Q. It wouldn't be?

A. It wouldn't be necessary.

Q. Could they do as well without advertising in the metropolitan newspapers?

A. That is in the matter of the judgment of the advertising manager.

[fol. 76] Q. But they advertise in the metropolitan newspapers?

A. I believe they are now.

Q. You know they are, don't you?

A. I believe they are. They are also advertising in community papers and they advertise in the control shopping newspapers.

Q. Doesn't Von's advertise in the metropolitan newspapers?

A. I believe they do.

Q. Didn't Shopping Bag prior to the merger?

A. I don't know whether they did or not.

Q. You don't know whether they did or not?

A. Not all of the chains. In fact I know that all of the chains do not advertise in the mets.

Q. How many chains are you talking about when you say "all the chains"?

A. Well, there again I will have to go back and list all the number of chains. I believe there might be about 25. I would say that basically about half of them may do that. They go in and out. I can remember when something may happen and they decide they are not going to go into the metropolitan newspapers or they may decide that they are not going to go into a community paper. They make a study of their advertising plans from year to year and they change.

Q. Do they all advertise in these controlled papers that you mentioned?

[fol. 77] A. I would say that 95 per cent of them do.

Q. 95 per cent of what?

A. Of practically all markets. And I don't have any incidents where the chain does not advertise.

To go into that, I remember one time one of the chains became angry at one publisher and went out of the paper and then instead of depending upon the metropolitan paper and the community paper they devised their own, if you want to call it a throwaway, and they printed that and they circulated it themselves from door to door, because they couldn't—

Q. What chain are you talking about?

A. Well, actually at that time, this was some time ago, it was Safeway in one area. And they quit doing it and went door to door.

Q. Which area was that?

A. It was an area in the Valley. This was a long time ago.

Q. How long ago?

A. I don't remember.

Q. Ten years ago?

A. Probably ten years ago. About ten years ago.

Q. At least ten years ago? But that is the only incident that you know of that this happened?

A. Oh, if I went—No. If I went back over the records I can remember Sears & Roebuck doing—This is not a food [fol. 78] store. But these markets change their policy overnight. But I would say that they depend by and large, the big dependence is on the controlled circulation newspaper for the chains and the small markets. All of them, independent markets, everyone.

Q. What do you define as a chain, Mrs. Corey? You are talking about chains.

A. There are different definitions.

Q. What is your definition? What have you been meaning when you spoke about chains?

A. I have been thinking of stores that have 12 or more.

Q. That is your definition of a chain, an organization with 12 or more stores?

Mr. Vaughn: That is what she said.

Mr. Coyle: I am just clarifying it.

Q. That is your definition?

A. I have been thinking of that, that that would be 12 or more, yes.

Q. How many stores does Safeway have?

A. I don't know and they won't tell you.

Q. They have 12 or more?

A. They have 12 or more.

Q. And they do advertise in the metropolitan papers?

A. I believe they are now; I believe they are. Personally I don't shop at Safeway and I don't know. I haven't paid any attention. I have been out of town. As I say, their [fol. 79] policy changes. But I assume they have ads in the metropolitan papers.

Q. What about Ralphs?

A. I believe they do too.

Q. And Von's you know does?

A. I believe they do.

Q. Does Market Basket?

A. Probably. I don't recall.

Q. Does Mayfair?

A. I don't recall.

Q. Does Fox still have ads in the metropolitan papers?

A. I don't know whether they do or not. I have no Fox in my area so I don't know about Fox.

Q. Do you know whether Safeway has an ad in the controlled papers?

A. Yes, I know they do.

Q. How do you know that?

A. Because I have been looking over some of the control circulation papers in behalf of another client of ours.

Q. Does Von's?

A. Yes, they use some. They don't use all. They use some, depending on their advertising manager's choice.

Q. Is radio and TV a medium of advertising for grocery stores?

A. I don't know whether they use it very much or not. [fol. 80] I don't think they do. They might do it more for image advertising. I mean I remember that Von's a number of years ago, they had a movie or something in the afternoon, I believe, or maybe it was in the evening. I never watched it. But I believe they did have a movie on TV. And I don't know whether any of the others have or not.

Q. Do you know what percentage of the chains of 12 or more stores advertising budget goes into metropolitan newspaper advertising in this area?

A. No, I don't know. But I think that would be easy to find out, what percentage goes into metropolitan, what percentage goes into community and what percentage goes into control circulation newspapers.

Q. But you don't know right now?

A. No, I don't.

Q. You have been talking about these surveys that you made in the vicinity of Carson Street and Woodruff Avenue and the other one in the vicinity of Santa Gertrudes and Whittier Boulevard, and you have stated that you don't know where the persons interviewed lived.

Mr. Vaughn: On the basis of the information now before her, that is what she said.

Mr. Coyle: Q. On the basis of your report you don't know that. Do you know whether they all lived within this three-mile radius?

A. Yes, because we did the interviewing in the home and [fol. 81] we didn't go beyond the three-mile radius. They were in-home interviews.

Q. Was the purpose of this study to develop facts for Von's Grocery in connection with their consideration of possibly a store in that area?

A. Yes. We say that.

Q. Did Von's actually open a store at the intersection of Carson Street and Woodruff Avenue?

A. I believe they did.

Q. And did Von's also open a store at the intersection of Santa Gertrudes Avenue and Whittier Boulevard?

A. I believe they did.

Q. Had they those spots under consideration when you made this survey?

A. Yes.

Q. And you took a radius of three miles from those locations to make your interviews to determine whether they should locate a store there?

A. Yes.

Mr. Coyle: I have no more questions.

Mr. Vaughn: I have none.

Mr. Coyle: That is all.

(It was stipulated by and between counsel that the foregoing deposition be signed before any notary public with the same force and effect as though read, corrected and [fol. 82] signed in the presence of the notary public before whom it was taken.)

—, —, (Signature of the Witness.)

Subscribed and sworn to before me this — day of —, 1963.

—, —, Notary Public, in and for the County of Los Angeles, State of California.

[fol. 83] STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, HAROLD M. LEIBOVITZ, C.S.R., a Notary Public within and for the County of Los Angeles and State of California, do hereby certify;

That prior to being examined, DOROTHY D. COREY, the witness named in the foregoing deposition, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken before me pursuant to oral stipulation, at the time and place therein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; that the said deposition is a true record of the testimony given by the witness;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness before any notary public in and for the County of Los Angeles, State of California.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal, this 6th day of June, 1963.

Harold M. Leibovitz, Notary Public in and for the County of Los Angeles, State of California.

[fol. 84]

CORY EXHIBIT 1

RESEARCH

A Monthly News Letter prepared for Western Advertising
by Facts Consolidated

NOTEBOOK

DR. GEORGE GALLUP IS BEING QUESTIONED before a committee by Congressman Clarence J. Brown:

Mr. Brown: "Dr. Gallup, what is the largest sampling that you make in the United States, the largest number, in order to pass on a given question?"

Dr. Gallup: "On a given question?"

Mr. Brown: "Yes."

Dr. Gallup: "3,000 is a typical sample."

Mr. Brown: "3,000 over the United States?"

Dr. Gallup: "Yes; over the United States."

Mr. Brown: "How many counties are there in the United States?"

Dr. Gallup: "3,070, I believe."

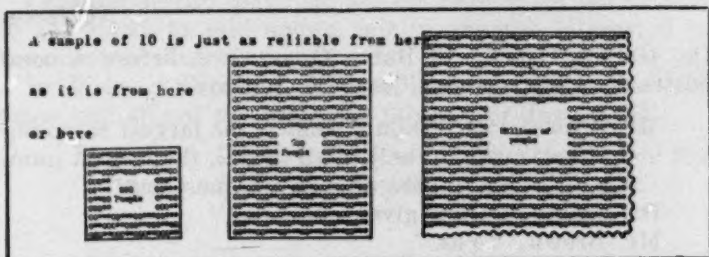
Mr. Brown: "You then make a sample of polls of a little under one per county in the United States?"

Dr. Gallup: "That is right. And I might add that is more than we would need to take it. If we took 1,500, it would probably keep within the margin of error that we claim."

That Was Ten Years Ago. Today in research we are still trying to convince people that sampling errors are determined by the size of the sample and not by the size of the population. A random sample of 400 out of a population of 50,000,000 is just as reliable as a random sample of 400 out of a population of 5,000. (—practically. Read the "fine print" at the end of this article.) We had better be right about this because some "relatively small" samples are being used today.

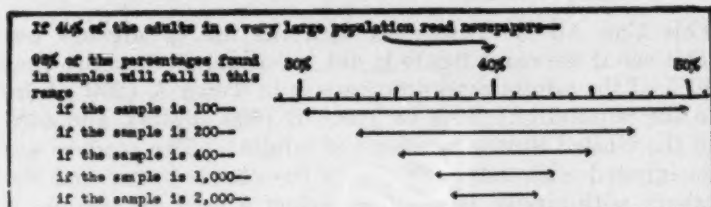
This Can All Be Discussed with the use of algebra but let's see if we can't figure it out intuitively. Suppose that 40% of the adults read newspapers in Town A (200 adults in the population), 40% in Town B (600 adults), and 40% in the United States (millions of adults). The readers are designated with asterisks (*) in the charts below and the others with circles (o). If we select a random sample of

10 adults from any one of these areas, about 4 out of the ten will be newspaper readers. Sometimes we will get 3 or 5 or perhaps 2 or 6 but—we will not be farther from the truth in the larger areas than we will in Town A.



[fol. 85] If the Number of Items in the Population has nothing to do with our sampling errors, what does affect these errors? The size of the sample. Other things being the same, samples of 200 have smaller sampling errors than do samples of 100. However, if the sampling error of a sample of 100 is to be cut in half, the sample must be increased to 400, that is, it must be quadrupled.

Sample Results Are Either Above or Below the Truth (except in those rare cases when they coincide with the truth). By "sampling error" we mean the difference between the truth (say, 40%) and the sample percentage (say, 38%). In the chart below, we can see that the range of sample percentages around the truth varies as the sample size varies. For example, if we use a sample of only 100, we would not be surprised to get a sample percentage as low as 32% when the population percentage is 40%. But with a sample of 1000 from a population which has a percentage of 40%, for example, we would rarely have a sample result of less than 37% or more than 43%.



60% Has the Same Sampling Error That 40% Has. If 40% is subject to a 3% sampling error, 60% has the same error. Percentages of less than 40% (or more than 60%) have smaller sampling errors than does 40%. Percentages nearer 50% have larger sampling errors.

What About Relatively Large Samples? We have picked our examples carefully in the first part of this article and have not made the following statement which is obviously nonsense: "A sample of 990 out of a population of 1,000 has the same sampling error as a sample of 990 out of a population of 1,000,000." There just can't be much sampling error in a sample of 990 out of 1,000! We must carefully modify our opening statements now to read: "The size of the population does not affect the sampling error unless the sample is a sizeable part of the population." Usually the sample is not a sizeable part of the population—usually far less than 10% or even 1%. But let us compare (1) a sample of 1,000 from a population of 10,000 (this is 10%) and (2) a sample of 1,000 from a population of 10,000,000. If the percentage being measured is about 40%, we would be reasonably sure that our error was no greater in the first case than 2.93% and no greater in the second case than 3.08%. This is not a substantial difference and we go back to our first statements: **It Is the Size of the Sample That Counts!**

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DEFENDANTS' EXHIBIT BE
IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60-C

[Title omitted]

AFFIDAVIT OF VICTOR HINSON

STATE OF CALIFORNIA,
County of Los Angeles, ss:

VICTOR HINSON, being first duly sworn, does hereby depose and state as follows:

I am the Secretary of Von's Grocery Co.

In October, 1960, attorneys for Von's Grocery Co. requested me to conduct a survey of the following Von's and Shopping Bag stores which, they advised me, the Government contended were in competition for the same customers prior to the merger of Von's and Shopping Bag:

Present Von's Store No.	Store No. Prior to Merger	Location
4	Von's 4	Monterey Park
5	Von's 5	Downey
22	Von's 22	Reseda
26	Von's 26	Garden Grove
27	Von's 27	Whittier
29	Von's 29	Alhambra
31	Von's 31	West Covina
32	S.B. 32	West Covina
33	S.B. 33	Anaheim
35	S.B. 35	Downey
39	S.B. 39	Reseda
40	S.B. 40	Montebello
41	S.B. 1	La Habra
51	S.B. 11	San Marino
56	S.B. 16	Alhambra
60	S.B. 20	Pico Rivera
61	S.B. 22	Whittier
67	S.B. 27	Monterey Park
68	S.B. 28	La Puente

I instructed each store manager of the above stores to record the names and addresses of the first 200 persons cashing checks at his store on various Fridays and Saturdays between October 21 and December 9, 1960. These names and addresses were then copied onto lists which were returned to me. Those lists are Exhibit AA.

I then procured maps of the areas surrounding the above stores. My secretary, working under my supervision, inserted on those maps an appropriately labeled marker at the location of each store involved in the study. She then located on those maps the address of each person named in the above referred to lists and placed a pin in the map at that address. The color of the pin used corresponded to a color assigned to the store at which the person had cashed his check.

In some cases, the addresses of two or more customers of one store were so close together that a pin could not be used for each customer. In such cases, then, a single pin represents two or more customers of one store.

I believe that the pins so located on those maps (which are Exhibits AB through AE) fairly depict the residences of typical customers of the above named stores and outline the area from which such stores draw their customers.

Victor Hinson.

Subscribed and sworn to before me, this 22 day of October, 1962.

Janet L. Larsen, Notary Public in and for said County and State, [Seal]

My Commission Expires July 20, 1963.

DEFENDANTS' EXHIBIT BF

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60-CC

[Title omitted]

AFFIDAVIT OF ROY L. BOUQUE

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AFFIDAVIT OF ROY L. BOUQUE

STATE OF CALIFORNIA,

County of Los Angeles, ss:

ROY L. BOUQUE, being first duly sworn, does hereby depose and state as follows:

I am a partner in the firm of Lybrand, Ross Bros. and Montgomery, a national firm of certified public accountants. In 1960, and again in 1961, Lybrand was asked by attorneys for Von's Grocery Co. to make an analysis and study of certain aspects of the retail grocery business in Los Angeles and Orange Counties. That study was made and conducted by members of Lybrand's central research staff with the assistance of personnel from the Los Angeles office. The purpose of this affidavit is to set forth the results of our study.

Analysis of Trading Areas of Selected Von's and Shopping Bag Stores

In order to determine the extent of competition between Von's and Shopping Bag prior to the merger, we made a study in 1960 of the trading areas or "draw" areas of the Von's and Shopping Bag stores which we were informed the Government contends were near enough to each other to compete for the same customers. The purpose of this study was to determine whether and to what extent competition actually existed between Von's and Shopping Bag prior to the merger by determining whether and to what extent the draw areas of the stores in question actually overlapped.

It is generally believed by retailers and other authorities * that the vast majority of the customers of a typical supermarket in the Los Angeles metropolitan area live within two miles of the store. In fact, it is most unusual for a store to draw any significant number of customers from as far as two miles away, while many stores in highly populated communities have a draw area of less than a mile. Nonetheless, for purposes of our study, we assumed that each

* See, for example, "The Selection of Retail Locations," by Richard L. Nelson, 1958, p. 49.

store had a possible trading area of from $1\frac{1}{2}$ to 2 miles, and accordingly, we made an analysis of each of the stores in question based on a possible or theoretical draw area of $1\frac{1}{2}$ miles and another possible or theoretical draw area of 2 miles.

Next, it is apparent that in only a very few instances can trading areas be defined in a perfect circle with a radius of $1\frac{1}{2}$ or 2 miles. One of the obvious reasons for this is that barriers to traffic such as freeways, railroads, water channels, hills and the like may inhibit or entirely prevent access to a particular store from within a theoretical circular draw area. Therefore, by plotting and analyzing traffic barriers and other similar factors which influence the actual draw area of each store in question, we arrived at what we have called the "adjusted draw area," or that segment of the theoretical draw areas which is not cut off from the store by some traffic or other barrier.

Next, we determined from census figures, the population and number of dwelling units in each theoretical draw area, each adjusted draw area, and, in any case where there was an overlap in the theoretical or adjusted draw areas of a Von's and a Shopping Bag store, in each such overlap area.

Finally, in recognition of the fact that normally customers do not (except on a basis of personal preference which cannot be measured statistically) pass one supermarket to shop at another supermarket further down the road, we also took into account the markets operated by major competitors of Von's and Shopping Bag which might be found in the theoretical or adjusted draw areas studied.*

The detailed results of our study are set forth in Appendix I to this affidavit. In addition, we have prepared maps to depict graphically what is stated in words in the appendix.** The conclusions which necessarily follow from our analysis is that prior to the merger, there were few

* It was not feasible to list or mark on our maps all of the stores operated by competitors in these areas. Also, since the study was made other stores have been opened in many of those areas.

** See Page 6, *supra*, for explanation of maps. It is suggested that those maps be referred to in connection with any review of the store-by-store analysis which follows.

areas from which both a Von's and a Shopping Bag store drew customers, and that those areas of overlap which did exist were small both in terms of size and population. Hence, we conclude that there was very little actual competition for the same customers between Von's and Shopping Bag prior to the merger.

The following is a summary of our findings:

1. Summary.

Prior to the merger, Von's operated 28 stores and Shopping Bag 36 in the Los Angeles metropolitan area. Several other stores were planned by both concerns. We were advised that the Government contends that competition between Von's and Shopping Bag occurred in 20 areas, each of which could be served by both an operating or planned Von's store and an operating or planned Shopping Bag store as of the date of the merger. The foregoing study of those areas shows that:

1. If a $1\frac{1}{2}$ mile adjusted draw radius is used, there were only 9 instances of any sort of overlap between the draw areas of a Von's and a Shopping Bag store, whether planned or actually operating. If a 2 mile adjusted draw radius is used, there would be 11 instances of such overlap.

2. The total population in those areas of overlap was 104,320 if a $1\frac{1}{2}$ mile adjusted radius is used, and 237,390 if a 2-mile adjusted radius is used. These totals represent less than 1.6% and 3.6%, respectively, of the total population of 6,668,975 people who inhabited the Los Angeles metropolitan area as of the date of the merger.

3. There were at least one, and more often several, supermarkets operated by competing concerns within every overlap area but one.* Of course, those stores being in

* The one overlap area referred to here was the overlap in trading areas between Von's proposed store in Northridge at Nordhoff and Reseda Boulevard and Shopping Bag's proposed store in Granada Hills. Those store locations were nearly four miles apart, so that there is no $1\frac{1}{2}$ mile overlap area. The 2 mile overlap area is very small, containing only 2,400 residents. Since the merger, plans to open the proposed Shopping Bag store have been abandoned and the lease has been assigned to Food Giant which is now operating a store at that location.

the areas of overlap themselves were almost invariably much closer and more convenient to residents of those areas than were either the competing Von's or Shopping Bag stores. In view of this fact, it is quite probable that as a matter of economic reality neither Von's nor Shopping Bag had much chance of luring customers in those overlap areas. As a result, it would be an overstatement to say the competition between Von's and Shopping Bag involved 3.6% or even 1.6% of the population. It is a more logical conclusion that competition between the stores of the two companies was virtually non-existent.

2. Explanation of Maps.

As is stated above, we have also prepared maps which graphically depict the results of our study. These maps are Exhibits AG through AL. By a series of overlays the maps show the Von's and Shopping Bag stores either operating or planned as of the date of the merger, the locations of competing markets, theoretical trading areas, main physical barriers to access and population.

On the face of each map itself (marked 1), we have located each Von's and Shopping Bag store operating or planned as of the date of the merger. A blue dot represents a Von's store. An orange dot represents a Shopping Bag store. In order to depict the theoretical trading areas of the stores which we studied, blue circles have been drawn around each Von's store which is within 4 miles of a Shopping Bag, and orange circles have been drawn around each Shopping Bag store within 4 miles of a Von's store. The inner circle shows the circumference of the theoretical 1.5 mile draw area. The outer circle represents the circumference of the 2 mile draw area. If the circles around any store are broken, it means that the store was only planned as opposed to operating at the time of the merger.

The first overlay (marked 2) depicts by green dots stores operated by other chains having more than 10 stores in the Los Angeles Metropolitan Area as of the date of the merger.

The second overlay (marked 3) shows natural or man-made barriers to access marked in red. This overlay also shows by yellow hexagons, or six-sided figures, the location of stores operated by chains with 4 to 10 stores in the Los Angeles Metropolitan Area. In some cases this over-

lay also contains orange squares which show the location of stores operated by concerns with 1, 2 or 3 stores in the Los Angeles Metropolitan Area. In other cases these stores are similarly depicted on the next overlay (marked 4).

The overlay marked 5 shows population. The first of these overlays which we prepared is appended to the map of the San Fernando Valley. (Exhibit AJ.) In that case we depicted population by the use of black circles, each of which represents 200 persons. On all the maps subsequently prepared we used a yellow square for each census tract. Those yellow squares contain two numbers separated by a line. The number above the line indicates population. The number below the line indicates the number of dwelling units.

All of the above overlays were prepared based on information available in September, 1960. The last overlay (marked 6) was prepared on the basis of additional information to November, 1961. The blue dots on that overlay show the location of Von's stores opened since the merger. The circles around them show the 1.5 and 2 mile theoretical draw areas. This overlay also depicts the locations of discount houses with food departments (by purple squares), the stores opened since September, 1960, by chains with more than 10 stores in the Los Angeles Metropolitan Area (by green squares), and stores opened since that date by chains with between 4 and 10 stores in the area (by yellow squares).

As is stated above, it was not feasible to indicate the locations of all stores which competed with Von's and Shopping Bag stores in the areas studied so that to some extent our maps and analyses understate such competition.

Statistical Data (Exhibits — and —)

As part of our study we prepared certain charts and tables. The first table (Exhibit AM) lists the leading 20 chains in the Los Angeles Metropolitan Area as of June, 1960, and shows their sales and share of the market for the years 1948, 1954 and 1958, and the first 6 months of 1960. (The figures used were compiled in the manner explained in paragraph 20, pages 24 to 25, and in paragraph 19, pages 22 to 24, of the document entitled "Statement in Support

of Defendant's Proposed Exhibits'', filed in this action on December 18, 1961.)

Exhibit AM shows, among other things:

1. The share of the market enjoyed by the market leader, Safeway, declined from 14.2% in 1948 to 7.7% in 1960. The second-ranked concern in 1948, 1954 and 1958—Ralph's—experienced a decline in share of the market from 6.9% in 1948 to 6.4% in 1960.

2. In 1948, no retail grocery company other than Safeway or Ralph's had more than 2.5% of the market. By 1960, there were 8 concerns with more than 3%. Despite their growth, these 8 concerns had 41.3% of the market in 1960, meaning that the majority of sales in this area were still accounted for by smaller chains and independents.

3. In 1948, Safeway and Ralph's combined enjoyed sales amounting to 21.1% of the market, while in the same year, the remaining 18 concerns listed had combined sales representing only 15.4%. By 1960, the situation had changed dramatically. Safeway and Ralph's had 14.1% of the market between them, and the remaining chains listed had 39.8%.

4. Seven of the firms listed were not in business at all in Los Angeles in 1948. Among them is Food Giant which ranked fourth in the area in 1960 with 29 stores and 4.6% of the market. As late as 1954, Food Giant had only two stores and less than 1% of the market.

5. The obvious conclusion to be drawn from the foregoing is that the size and relative strength of the market leaders in 1948 apparently offered no deterrent to the growth and entry of smaller concerns. Indeed, the market share enjoyed by the leaders in 1948 has declined significantly while other firms experienced growth.

We have been advised that the Government has sought to show that the grocery business in Los Angeles has become more concentrated in recent years. They have pointed to the increase of the share of the market enjoyed by the top 20 concerns in the last decade as evidence of such an increase.

Statistically, we feel that this comparison is of questionable value because the "top 20" 10 years ago consisted in part of different firms than are in the "top 20" today. As

a result, the comparison of the two offers only a highly qualified insight into the changes which have occurred in grocery retailing in the last decade. Perhaps of greater importance, however, is that the Government's comparison ignores the significance of change in the entities which make up the top 20. The very fact that the top 20 today is different than the top 20 10 years ago, or that 7 firms in the top 20 today were not even in existence in 1948, is evidence of an absence of concentration and a strong indication of competitive vitality.

But if change in the share of the market enjoyed by any chain or group of chains is indicative of a change in degree of concentration, we believe that it would be as significant, if not more so, to consider changes in the market share of the top 3, 5 or 8 as well as the top 20. With this thought in mind, we have made an analysis of the comparative share of the market enjoyed by the top 3, 4, 5, 8, 9, 15 and 20 chains in each of the years from 1950 to 1960. We have made this analysis in order to compare it with the Government statistics with respect to the top 20 only. However, we still feel that the value of such statistics is impaired where it can be shown in any grouping of chains that the entities which make up that grouping are different from one period to another. Our statistics appear in Exhibit AN in table and in graph form. (Again, the figures used were compiled in the manner explained in paragraph 19, pages 22 to 24, of the document entitled "Statement in Support of Defendant's Exhibits" filed in this action on December 18, 1961.)

Exhibit AN shows that:

1. The combined share of the market enjoyed by the top 3, 4 and 5 chains steadily declined from 1952 to 1959, the year before the merger in question. Even after the merger, which has the effect of combining the third and fifth ranked concerns and thus necessarily increasing the combined share of the market of the top 3, 4 and 5 correspondingly, their market share was still below its 1952 high. Therefore, measured by the sales of these concerns—the market leaders—and using the same method of analysis employed by the Government, it is obvious that concentration has decreased.
2. The share of the market enjoyed by the smaller firms

in the top 20 increased. With the market share of the top 5 showing a steady decrease from 1952 through 1959, it can only be concluded that the remaining chains in the top 20 were solely responsible for the increase by the top 20 as a whole. This tends to support our conclusion based upon an analysis of the performance and growth of each of the companies in the top 20 in 1960 (see *supra*) that smaller concerns have grown stronger. To us this indicates a decrease in concentration and an absence of domination by a few concerns. It also shows that the market position of the area leaders has not inhibited the growth of smaller concerns.

Our last table in this section deals with the comparative sales of Von's and Safeway. The records of the two companies for the year 1960, the year in which Von's and Shopping Bag merged, shows that Safeway's sales in the Los Angeles Metropolitan Area exceed Von's by more than \$11,000,000.

	Von's	Safeway	Difference
Total Sales (000).....	\$172,488	\$184,313	\$ 11,825 (A)
Percent of total food store sales (B)...	6.9	7.4	.5
Percent of total grocery stores sales (C).....	7.5	8.0	.5
Number of stores.....	66	146	80

(A) Safeway sales are 6.9% greater than Von's sales.

(B) Food sales in 1960 stipulated as \$2,500,000,000.

(C) Grocery sales computed as 92.4% of total food sales. Estimated percentage based on trend line extension of the percentage relationship of grocery sales to food sales for the years 1954 to 1958.

Source: Safeway and Von's records.

Discount Houses

We found that the sale of food in discount houses has become a factor of increasing importance in the grocery business in Los Angeles, particularly in the past few years. As late as 1959 and 1960, discount food operations were both few in number and importance, but as of the end of 1961, there were approximately 40 discount houses selling a complete line of grocery products in Los Angeles and Orange Counties.

These outlets can charge lower prices than do conventional supermarkets in the area. This is in part due to the fact that discount houses have lower operating costs and in part because often times low food prices are used to

attract customers who may buy appliances and other merchandise on which markups are higher. Also, surveys have indicated that average sales per customer* and average sales per square foot of selling space** are higher in discount houses than in supermarkets.

Also the discount house offers the advantage of complete one-stop shopping, and as hereinafter noted, we found that a discount house draws its customers from a much greater area than the conventional supermarket.

First, Lybrand obtained from Von's a survey made between June 29 and July 1, 1961, of customers of those three discount houses. The survey was conducted by a part-time employee of Von's who took down the license numbers of 675 cars parked in the parking lots of the Big A in Canoga Park, CMA in Anaheim and CAL Stores in Lakewood, all discount houses with food departments. Von's security department then obtained the addresses of the owners of 289 of those 675 cars. With this information, Lybrand plotted on a map the draw areas of each of the above discount houses. (Exhibit AP.) Those draw areas are depicted by lines running out from the discount houses to the residences of those whose cars were observed in the discount houses' parking lots.

Because it was believed that the above sample of discount house customers may have been relatively small, a similar study was conducted on October 14 and 15, 1961, under the supervision of Lybrand, Ross Bros. & Montgomery. This time, an employee of Von's security department copied down the license numbers of a total of 4,190 cars parked in the parking lots of the above discount houses. 24% of those license numbers, selected at random, were checked with the California Department of Motor Vehicles and the address of the owner of the car was thus obtained. Lybrand then prepared an overlay for the map previously referred to (Exhibit AP) to depict the draw areas, based

* "Who Is The Discount Customer?", by Ray Helsel, Director of Marketing, This Week Magazine, concerning a 1961 study of CMA in Anaheim, California.

** "The Big A—How A Discount Food Market Operates", The Discount Merchandiser, August, 1961.

upon those addresses, of each of the above discount houses in the same manner as in the case of the earlier study.

The results of the two studies are substantially similar and show that the trading areas of the above three discount houses are six miles or more.

The following shows the results of the study conducted in October, 1961, under our supervision:

Approximate Radial Distance of Residence of Customers of Three Discount Department Stores

Approximate Distance	The Big A	CMA Anaheim	CAL Stores Lakewood
Two miles or less.....	144	115	57
Two to four miles.....	117	49	11
Four to six miles.....	12	48	177
Over six miles.....	119	74	83
	<hr/> 392 <hr/>	<hr/> 286 <hr/>	<hr/> 328 <hr/>

Thus, it was observed that more than 25% of the customers surveyed lived more than 6 miles from the discount houses at which they did their shopping. Compare this draw area to that of a conventional supermarket which draws the vast majority of its customers from no more than 2 miles away, and it can be seen that discount houses are already a potent competitive factor in Los Angeles. In fact, the majority of the Von's and Shopping Bag stores in the Los Angeles Metropolitan Area are within 6 miles of a discount house. Therefore, it would appear that Von's and many other chains and independents in Los Angeles are already in direct competition with discount food stores.

The idea of food departments in discount houses is attracting the attention of grocery men and other retailers. In 1961, Thriftmart, a local grocery chain, acquired MORE Department Stores, which operates 4 discount houses with food departments in the Los Angeles Metropolitan Area. Foods Co., a chain of 6 supermarkets, is operating a large food department in the Big A discount house in Canoga Park. May Co. plans to introduce self-service food departments "complete with carts, baskets and check-out desks" in three of its Los Angeles department stores, according to announcement of its president, Morton D. May. Food Giant, Lucky Stores, Thriftmart and Mayfair, for example, are all now selling food through discount outlets.

It is therefore quite apparent that operators of discount

houses and even department stores are becoming, if they are not already, the competitors of more conventional grocery retailers. This is only another indication of the dynamic and ever changing competitive atmosphere in which the grocery business, particularly in Los Angeles, is conducted.

Indeed, change seems to be the pattern in Los Angeles. In the 2½ years since the merger of Von's and Shopping Bag, this area has not only seen the emergence of discount food retailers, but also an influx of two powerful and large national chains which rank among the nation's leaders in terms of number of stores and total food sales. They are American Stores, which acquired Alpha Beta, and Food Fair, which is now operating Fox Markets. These developments, like most of those occurring in the Los Angeles food industry, can mean only one thing—keener, more vigorous competition.

Financing New Supermarkets

A significant factor in the competitive situation of the retail grocery trade in the Los Angeles Metropolitan Area is the ability of a qualified operator to enter into competition with the existing businesses in this area. In this section we analyze the financial considerations affecting a qualified entrant who opens a new supermarket. It should be understood that lower costs could be anticipated if a smaller store were being opened or acquired from another operator.

In so doing, we have selected a hypothetical supermarket with 16,000 square feet of storage space. The business is assumed to have been started in 1961 by an independent operator having no other stores or supermarkets. It is also assumed that the supermarket would not have a separate warehouse, but would be supplied by a wholesaling organization, such as a cooperative, delivering directly to the store. (Appendix II to this affidavit contains the Reference Tables which support our conclusions.)

If the above conditions are assumed, one may expect a financial situation of the following approximate magnitude:

	\$	Reference Table
1. The total capital required to establish such a supermarket would be consisting of:	290,000*	
Merchandise inventory	\$ 76,000	1
Equipment and supplies	100,000	2
Structural additions and improvements	104,000	3
Leasehold deposit	10,000	
Real estate (leased)	—	
2. The independent operator would be entitled to expect financing in the amount of	172,000	
consisting of:		
Merchandise inventory by suppliers to cover one turnover	59,000	1
Equipment and supplies	61,000**	2
Structural additions and improvements	52,000**	3
3. Thus, he would have to make an initial cash investment of	118,000	(1 minus 2)
However, this cash investment could be reduced if the operator decided to acquire vendor-loaned or used equipment		2(2)
Moreover, cash investment in inventory could be reduced by special arrangements with suppliers		1(A)
4. With a total space of 16,000 square feet, the operator would have about 11,000 square feet of selling space. This should produce annual sales of	1,700,000	4
5. On this volume, annual profit after deducting proprietor's salary, depreciation, amortization, interest, federal income taxes and other operating expenses, would amount to	26,000	4

* Source: Chain Store Age, December 1960, Pg. 38 et seq.
(See detail in tables set forth in Appendix II.)

** Trade sources indicate that banks have lent up to 60% of the fixed asset investment without guarantee, and that individual companies have financed stores through sale of stock to local investors.

Fred J. Bury, "Financing Your New Super Market", Reprinted from National Association of Retail Grocers of U.S. Bulletin, Chicago, Ill. (a collection of reprints), Pg. 5 et seq.

"Formulas for Financing", Reprinted from National Association of Retail Grocers of U.S. Bulletin, Chicago, Ill. (a collection of reprints), Pg. 7 et seq.

	\$	Reference Table
6. The cash generated from the business would amount to	48,000	
consisting of		
Annual profit, as above	\$26,000	4
Depreciation and amortization	22,000	4
This would be sufficient to repay the borrowed capital of \$113,000 in less than three years		
7. For the net cash invested in the business of	118,000	3 above
the operator would have earned a profit—over and above his salary—of	26,000	4
This represents in excess of 20% a year on his investment.		

From the foregoing information, which is supported in detail by data in the four tables in Appendix II, it will be seen that a qualified operator can enter into the retail grocery trade for a relatively low capital outlay; he can earn a satisfactory profit on the capital he needs to invest personally; and he can retire his long-term debt within about three years of starting business.

Roy L. Bouque

Subscribed and sworn to before me this 17 day of April, 1963.

Kathryn M. Moore, Notary Public in and for the County of Los Angeles, State of California, [Seal.]

My Commission Expires Dec. 26, 1964.

